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IN THE

Supreme Court of the United States

October Term, 1970.

No. 1499

JAMES H. J. TATE, Mayor of Philadelphia and ROMANUS J. BUCKLEY, Finance Director of the City of Philadelphia and PHILLIP M. POORMAN, Treasurer of the City of Philadelphia and PAUL D'ORTONA, President of the City Council of Philadelphia, and all other members of City Council as follows: WILLIAM F. BOYLE, EDGAR C. CAMPBELL, SR., EDWARD R. CANTOR, THOMAS M. FOGLIETTA, JOHN B. KELLY, JR., THACHER LONGSTRETH, WILLIAM COTTRELL, WILLIAM A. CIBOTTI, CHARLES L. DURHAM, GEORGE X. SCHWARTZ, THOMAS McINTOSH, JOSEPH L. ZAZYCZNY, HARRY P. JANNOTTI, DAVID COHEN, ISADORE H. BELLIS, DAVID SILVER,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, ex rel. HONORABLE D. DONALD JAMIESON, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA (E. D.).

S. JAY SKLAR,
Assistant City Solicitor,
LEVY ANDERSON,
City Solicitor,
Counsel for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1970.

No.

JAMES H. J. TATE, Mayor of Philadelphia, et al.,
Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA, ex rel. HONORABLE D. DONALD JAMIESON, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania entered on February 16, 1971.

CITATION TO OPINIONS BELOW.

The opinion of Judge Harry M. Montgomery of the Superior Court of Pennsylvania, who was specially designated by the Supreme Court of Pennsylvania to hear and decide this case, is as of yet unreported and is printed in Appendix "A" hereto.

The opinions of the Supreme Court of Pennsylvania affirming the judgment of Judge Montgomery are as of yet unreported and are printed in Appendix "B", hereto.

JURISDICTION.

The judgment of the Supreme Court of Pennsylvania printed in Appendix "B" hereto was entered on February 16, 1971. Petitioners' Petition for Reargument was denied by the Supreme Court of Pennsylvania on March 19, 1971. A Petition for a Stay of Execution to the Supreme Court of Pennsylvania was filed on March 22, 1971 and denied on March 24, 1971.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3) since the validity of the decision of the Supreme Court of Pennsylvania on grounds of repugnancy to the Constitution of the United States is brought into question.

QUESTIONS PRESENTED.

1. May a court maintain an action in mandamus against the executive and legislative branches of a municipality to compel additional appropriations for said court where the effect of compliance with such judgment would deny the principle of one-man one-vote and deprive the citizens of the municipality of the effect of their votes and their basic right to elect legislative representatives whose constitutional duty is to decide to what extent said citizens should be taxed and how the tax moneys should be used?

(Answered in the affirmative by the Court below.)

2. May a court disregard the long established Doctrine of Separation of Powers and the United States Constitutional requirement of a Republican form of government by maintaining an action in mandamus against the executive and legislative branches of a municipality to compel additional appropriations where there is no evidence that the appropriations already made have destroyed or impaired the judicial function?

(Answered in the affirmative by the Court below.)

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED.

The following are involved in the determination of this case:

Article IV, Section 4, United States Constitution.

14th Amendment Section 1, United States Constitution.

Article XV, Section 1, Constitution of the Commonwealth of Pennsylvania.

Philadelphia Home Rule Charter, Sections 1-101, 2-300, 2-301, 2-302, 4-101(b), and 8-102.

The text of these provisions is set forth in full in Exhibit "C" hereto.

STATEMENT.

On June 16, 1970, the President Judge of the Court of Common Pleas of Philadelphia (Respondent) filed an action in mandamus against the Mayor, Finance Director, Treasurer, and all the Councilmen of the City of Philadelphia (Petitioners), to provide an additional sum of $5,230,817 for specified court operations over and above its appropriation for the City's fiscal year ending on June 30, 1971 (Fiscal 1971). In addition plaintiffs' complaint demanded an unspecified additional sum which would give to court employees, paid by the City of Philadelphia, the same increases in pay that were being negotiated (R. 4a-37a) by the City for civil service employees of the City.

In the fall of 1969 as required by Section 6-105 of the Philadelphia Home Rule Charter (Charter), Respondent submitted requests for appropriations totalling $21,236,015. On April 1, 1970, the Mayor as required by Section 4-101(b) of the Charter submitted his proposed annual operating budget ordinance for the ensuing 1971 fiscal year. At hearings before City Council on May 4, 1970 respondent presented a request for an additional appropriation of $5,230,-817; of this sum $2,012,801 had not previously been presented to either the Department of Finance or the Mayor.

All of the respondent's requests were for new programs or expansion of existing programs; with one exception none of the requests were for the purpose of continuing previous programs.

The Council appropriated the sum of $16,488,263 for the operation of the court, as recommended by the Mayor, but declined to appropriate the additional sum requested. This was $2,625,279 above the prior fiscal 1970 appropriation to the court amounting to $13,862,984.

Subsequent to the adoption of the fiscal 1971 budget, the City incurred an additional financial burden in the sum of $25,468,183.00 (not including the additional sum of $5,230,-817.00 demanded by respondent), as a result of compulsory arbitration awards to the City's police and firemen, additional pay increases and benefits for the civil service employees of the City, the opening of a penitentiary located in the City caused by a riot at another prison due to overcrowding, and additional police costs due to civil disturbances in the City in the summer of 1970.

The Supreme Court of Pennsylvania designated specially Judge Harry M. Montgomery, Judge of the Superior Court of Pennsylvania, to sit as a Philadelphia Common Pleas Judge and hear the case. After hearing testimony and argument, Judge Montgomery on September 30, 1970 entered this order in mandamus against defendants to appropriate the amount of $2,458,000.00.

Petitioners most vigorously contended before Judge Montgomery that the issuance of a writ of mandamus would violate the Doctrine of Separation of Powers and deny to the citizens of Philadelphia the right to have their elected representatives to City Council determine how their taxes should be spent. By issuing the writ of mandamus the court denied these contentions. Both parties filed exceptions to the order of September 30, 1970 (R. 156a-163a) which Judge Montgomery dismissed on November 2, 1970. He also affirmed his previous order of September 30, 1970 (Appendix "A"). From that order, both parties appealed to the Commonwealth Court of Pennsylvania. Following petitions filed by both plaintiff and defendants, the Supreme Court of Pennsylvania assumed jurisdiction of the appeal.

The Supreme Court, after receiving briefs and hearing oral argument affirmed, as modified because of passage of time, the order of the court below (Appendix "B").

The appellants filed a Petition for Reargument on February 26, 1971, which petition was denied.

A petition for a stay pending the disposition by Your Honorable Court of this Petition for a Writ of Certiorari has been filed with the Supreme Court of Pennsylvania and action thereon is pending. (Denied 3/24/71

REASONS FOR GRANTING THE WRIT.

The Supreme Court of Pennsylvania, by affirming the issuance of the writ of mandamus by the lower court, erred in that compliance with the writ will deny the principle of one-man one-vote and deprive the citizens of Philadelphia their basic constitutional right to elect legislative representatives whose constitutional duty is to levy taxes and determine their allocation.

Under the Philadelphia Home Rule Charter, the legislative power of the City was exclusively vested in and exercised by the City Council (Section 1-101). It is the mandated duty of City Council (Section 2-300-302 of the Charter) to adopt an annual budget and enact the necessary revenue measures as will yield sufficient revenue to balance the budget. The citizens of Philadelphia have elected a City Council to carry out the legislative functions authorized in the Philadelphia Home Rule Charter. By the issuance of the writ of mandamus, the judiciary has not only usurped the right of City Council to legislate but it has taken away from the citizenry of Philadelphia their right to taxation with representation. While members of the State judiciary are elected by the people, the protection of one-man one-vote and equality of representation as first expressed by this Court in *Baker v. Carr,* 369 U. S. 186 (1962), are not complied with. The Supreme Court of Pennsylvania

is compelling the City Council to pass an ordinance or series of ordinances to make appropriations to the Court of Common Pleas but, as is clear from the record, the City does not possess adequate funds to cover the judicially directed appropriations. Council must therefore either take funds from other much needed and already reduced City programs or increase the City's deficit.

Furthermore, under Section 2-300(2) of the Philadelphia Home Rule Charter, the next fiscal budget must provide for "discharging any deficit." This most certainly would entail new revenue measures. While technically, Council would be enacting the budget ordinance and the Mayor signing it it would in fact be the judiciary to an extent passing the ordinance. This would deny to the citizens of Philadelphia the fundamental right to be governed by their elected representatives. The judiciary is not subject to frequent elections by the people, and that is as it should be, as long as their function remains the interpretation of the law and not legislation. The citizens of Philadelphia have no recourse against the Courts if they disapprove of their appropriations and mandamus additional funds. City Council and the Mayor may be voted out of office at reasonably frequent intervals. They are subject to recall under the Philadelphia Home Rule Charter (Section 9-100, et seq.). For all intents and purposes, the judiciary is not; only the cumbersome and time-consuming procedure of impeachment over which the people have no direct control can be used to remove judges.

The judicial interference with the legislative process, not only deprives the citizens of Philadelphia of their right to be taxed by their elected representatives but it repudiates the long established Doctrine of Separation of Powers among the three branches of government. The court here is substituting its judgment as to the proper appropriations to be made by Council for that of Council. It is a fundamental concept of law that the courts cannot inquire as to the motives which induced the Council of a municipality to adopt an ordinance or as to the wisdom of the exercise

of its discretion in so doing, but can consider only whether the Council has the power to so act. *Wabash Railroad Co. v. City of Defiance,* 167 U. S. 87, 42 L. Ed. 87 (1896).

The judiciary is saying that the judgment of Council in enacting the original budget ordinance was erroneous with regard to appropriations for the Common Pleas Courts of Philadelphia, and the courts will impose their own judgment by issuing a writ of mandamus. The concept of judicial non-interference with legislative functions is long-standing and well established. As long as a statute is constitutional the Legislature is the sole judge of its necessity or expediency and the courts may not refuse to expect legislative judgment or to challenge the wisdom of the Legislature. *McDonald v. Schell,* 6 S. & R. 240 (1820); *United States v. Henry Kissinger,* 250 F. 2d 940, cert. denied 356 U. S. 958 (1958).

The judiciary here is not only refusing to accede to the propriety of Council's budgetary ordinance but it is, in effect altering that ordinance and imposing its belief as to what it should include. There is no contention by respondent that the original budgetary ordinance by the City Council is violative in any manner of either the Philadelphia Home Rule Charter or the Constitution of Pennsylvania. The City Council has properly discharged its duties under the Philadelphia Home Rule Charter and its actions are immune from judicial interference. The line between the spheres of power and authority among our three branches of government sometimes becomes clouded and indistinct. Here, however, there is no lack of clarity as to the proper line between the branches; the judicial branch has here clearly overstepped the line into the exclusive domain of the legislature and executive.

The citizens of every state are guaranteed a republican form of government by Article IV, Section IV of the United States Constitution. Those citizens of Pennsylvania who are residents and taxpayers of Philadelphia are being denied this right. The judiciary is acting as both the legislature and executive in ordering the additional appropria-

tions for the Court of Common Pleas. If this precedent is allowed to be established, we may expect further judicial impairment of a fundamental principle of Separation of Powers involved here is fundamental to the effective functioning of our tri-partite system of government.

It has never been the contention of the petitioners that the executive and legislative branches of government may destroy or impair the judicial branch through failure to provide funds. On the contrary, it has always been their contention that the executive and legislative branches of government have a duty to cooperate with the judicial branch. Indeed, among equals, cooperation is the only possible course; tests of strength among equals destroy the equality. The essential republican form of government is destroyed where one branch (here the judicial branch) abandons cooperation and becomes coercive. As we have already noted, City Council appropriated for the Philadelphia Court of Common Pleas for fiscal 1971 the sum of $16,488,263.00, an increase of $2,625,279.00 over the prior year's appropriation. This increase occurred during a period of financial crisis for the City. If the court, under such circumstances, may insist upon more—to the detriment of other important City programs—then the court is supreme. Its action is then not self-defense but invasion of the proper spheres of the executive and legislative branches.

CONCLUSION.

WHEREFORE, Petitioners pray that Your Honorable Court grant a writ of certiorari and reverse the order of the Supreme Court of Pennsylvania herein.

Respectfully submitted,

S. JAY SKLAR,
Assistant City Solicitor,
LEVY ANDERSON,
City Solicitor,
Counsel for Petitioners.

APPENDIX "A".

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY,
COMMONWEALTH OF PENNSYLVANIA.

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County,
Plaintiff,

vs.

JAMES H. J. TATE, Mayor of Philadelphia, and ROMANUS J. BUCKLEY, Finance Director of the City of Philadelphia, and PHILLIP M. POORMAN, Treasurer of the City of Philadelphia, and PAUL D'ORTONA, President of the City Council of Philadelphia, and all other members of City Council, as follows: WILLIAM F. BOYLE, EDGAR C. CAMPBELL, SR., EDWARD R. CANTOR, THOMAS M. GOGLIETTA, JOHN B. KELLY, JR., THACHER LONGSTRETH, WILLIAM COTTRELL, WILLIAM A. CIBOTTI, CHARLES L. DURHAM, GEORGE X. SCHWARTZ, THOMAS McINTOSH, JOSEPH L. ZAZYCZNY, HARRY P. JANNOTTI, DAVID COHEN, ISADORE H. BELLIS, and DAVID SILVER,
Defendants.

Trial Division—
Civil Section.
No. 3084, June
Term 1970.

OPINION BY MONTGOMERY, J.:

This action in mandamus was brought in the name of the Commonwealth of Pennsylvania on the relation of Honor-

able Vincent A. Carroll, President Judge of the Court of Common Pleas of Philadelphia County, acting in that capacity, and also individually on his own behalf, and on behalf of the other Judges of the said Court, individually and as Judges (Relator). against Hon. James H. J. Tate, Mayor of the City of Philadelphia, Romanus J. Buckley, Finance Director of the City of Philadelphia, Phillip M. Poorman, Treasurer of the City of Philadelphia, Paul D'Ortona, President of the City Council of the City of Philadelphia, and the other members of said Council (Respondents), in which Relator sought from the City of Philadelphia (City) an additional budgetary allowance of Five Million Two Hundred Thirty Thousand Eight Hundred Seventeen ($5,230,-817) Dollars above the amount already budgeted by the City for the fiscal year commencing July 1, 1970, and ending June 30, 1971, for the use of the Courts of Philadelphia County (Relator-Court) in the performance of their judicial functions. The matter came on for trial before the writer of this opinion, sitting without a jury, the request for a jury trial having been withdrawn. After consideration of all the testimony, it was ordered on September 30, 1970, that a writ of mandamus issue, directed to the Respondents, ordering them to budget and provide for the payment of an additional sum of Two Million Four Hundred Fifty-Eight Thousand ($2,458,000) Dollars above the original amount budgeted. Exceptions were filed to said order by both the Relator and the Respondents, were argued on the 20th day of October, 1970, and this opinion is being written in disposition of same.

Although the testimony is somewhat voluminous, the facts are not in serious dispute. There is no problem regarding the credibility of the witnesses, the testimony offered by both sides being that of sincere, dedicated, experienced and prominent men.[1]

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[1] Some of the witnesses were Judge Vincent A. Carroll; Judge J. Donald Jamieson; Judge Frank J. Montemuro, Jr.; Judge Samuel H. Rosenberg; Judge Edmund B. Spaeth, Jr.; Edward J. Blake, Esq., Court Administrator of the Court of Common Pleas of Philadelphia;

The Court of Common Pleas of Philadelphia County, consisting of 56 Judges, serves the First Judicial District of the Commonwealth of Pennsylvania and has unlimited original jurisdiction in all cases except as may be otherwise provided by law. Pennsylvania Constitution, Article V, The Judiciary, §5. In addition to its general jurisdiction, it has appellate jurisdiction to review convictions in the Municipal Court of Philadelphia, which court was created under Article V, §6, of the Pennsylvania Constitution. Section 16(r) of the Schedule to the Judiciary Article sets forth the jurisdiction of the Municipal Court. The administration of the Municipal Court is co-ordinated with the administration of the Court of Common Pleas and the Municipal Court's financial requests and requirements are included in the complaint filed in this case. Judges of the Municipal Court who are members of the bar of the Supreme Court may be and are presently regularly assigned by the President Judge of the Court of Common Pleas to sit in the Court of Common Pleas to expedite the business of that court. There are seven judges learned in the law serving in the Municipal Court and fifteen judges unlearned in the law serving therein.

Mayor Tate is the Executive Officer of the City of Philadelphia and is responsible for the conduct of the executive and administrative agencies of that city and for law enforcement within its boundaries. He is responsible for making budget recommendations to City Council and for approving the budget as enacted by City Council. Romanus J. Buckley is the Director of Finance and is the chief accounting and budget officer of the City of Philadelphia. Paul D'Ortona is the President of City Council and the

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Frederick H. Downs, Jr., Chief Probation Officer of the Court of Common Pleas of Philadelphia; Fred L. Rosenbloom, Esq., member of the firm of Schnader, Harrison, Segal and Lewis; Walter E. Rauffenbart, Vice President and General Manager of the Legal Intelligencer; Edmund E. DePaul, Esq., Executive Director of the Philadelphia Bar Foundations Project; Martin J. Doyle, Deputy Finance Director of Philadelphia; Bernard J. Smolens, Esq., Chairman of the Common Pleas Court Committee of the Philadelphia Bar.

other respondents are members of that body, all being the duly elected representatives of the people and possessing the legislative power of the City. Phillip M. Pearman is the City Treasurer and is custodian of city funds; and he has the duty of paying money out of the city treasury.

The laws prescribing the duties and responsibilities of the foregoing officers are set forth in the Philadelphia Home Rule Charter, which is a statute entitled to all the force and effect of an act of the General Assembly. Commonwealth ex rel. Specter v. Martin, 426 Pa. 102, 232 A. 2d 729 (1967); Cathcart v. Crumlish, 410 Pa. 253, 189 A. 2d 243 (1963); Smith v. Gallagher, 408 Pa. 551, 185 A. 2d 135 (1962); Addison Case, 385 Pa. 48, 122 A. 2d 272 (1956).

On October 3, 1969, in accordance with the City Charter, the Finance Director submitted to the Court of Common Pleas the necessary forms for the submission of operating budget estimates for the 1970-1971 fiscal year; and on December 3, 1969, the Court of Common Pleas, acting in its own behalf and also in behalf of the Municipal Court, returned to the Finance Director those forms containing its estimate of the financial needs of both courts for carrying out their essential functions during that period. The total amount of the requests submitted was $19,706,278.[2] Following numerous consultations between representatives of Relator-Court and the Finance Director, a recommendation was made by that officer to the Mayor, who in turn made a recommendation to City Council, that the sum of $16,488,263 be budgeted for the operation of the Relator-Courts for the fiscal year, July 1, 1970, to June 30, 1971. This total was divided and allocated as follows:

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[2] This figure is not stated specifically in the record but was calculated by adding to the figure, $16,488,262, the amount approved in the budget, the difference between $5,230,817, the additional sum requested of Council, and $2,012,801, which Respondents contend was not requested of the Finance Director, the difference being $3,218,016. The additional amount of $1,931,912, which was budgeted for the use of Traffic Court, is not included in our calculations.

Municipal Court Judicial Staff	$ 451,532
Common Pleas Court Judicial Staff	2,126,839
Common Pleas Court Administration	13,909,892
TOTAL	$16,488,263

In the 1969-1970 budget the final and total amount budgeted for the Relator-Courts was $15,646,915, which included not only the appropriation made in the original budget but all increases authorized during the subsequent months. For 1970-1971 the figure of $16,488,263 represents the initial appropriation, as set forth in the original budget, but is subject to increase by proper action. Although the difference between the final 1969-1970 court budget amount of $15,646,815 and the initial 1970-1971 figure of $16,488,263 is $841,348, the larger part of that increase was allocated to an increase in wages of employees. Only $266,008 was allowed for additional services, and this was allocated as follows:

Jurors' Expense	$ 25,000
Data Processing	73,068
Personnel	100,000
Courtroom Furniture, Gibson Building	57,940
Repairs, 1801 Vine Street	10,000
TOTAL	$266,008

Of the sum of $5,230,817, claimed in the complaint, $2,012,801 was not requested of either the Finance Director or the Mayor prior to submission of the Mayor's recommendation to Council. However, at the Council sessions at which the budget was considered the Relator-Court presented a request for the additional sum of $5,230,817 over the amount recommended by the Mayor. Council denied this additional request, after hearing, and approved the amount recommended by the Mayor, i.e., $16,488,263, for the Relator-Courts. This mandamus action followed. However, since the complaint was filed Relator-Court's claim

has been reduced from $5,230,801 to $3,962,532. The schedule of the original request made to City Council, which is the same as made initially in the complaint in mandamus, the reduced request, and the final order of this court, dated September 30, 1970, follows:

	Original Request	Amended Request	Court Order 9/30/70
Adult Probation	$1,782,216	$1,071,937	$ 800,000
Juvenile Probation	539,922	345,032	250,000
Data Processing	453,934	434,175	250,000
Apprehension of Fugitives	335,910	284,322	285,000
Courtroom Personnel	224,452	152,420	100,000
Attorney Fees	300,000	300,000	300,000
Arbitration Fees	390,000	390,000	200,000
Writ Service	100,000	100,000	75,000
Gibson Building Personnel	227,036	113,518	Disallowed
Probation Relocation	24,500	24,500	Disallowed
Repairs—1801 Vine Street	40,000	40,000	Disallowed
Janitorial Staff	56,940	47,431	Disallowed
Microfilm	96,822	88,335	Disallowed
Bail Project	172,857	145,881	Disallowed
Dental Equipment	10,413	10,413	Disallowed
Domestic Relations	61,912	51,593	Disallowed
Total Copy System	23,000	23,000	23,000
Building Services	145,377	129,449	Disallowed
Law Clerks	133,206	133,206	100,000
Station Wagon	2,320	2,320	Disallowed
Prothonotary Relocation	35,000	Withdrawn	—
Crime Commission Grant	75,000	75,000	75,000
TOTALS	$5,230,817	$3,962,532	$2,458,000

The exceptions filed by Relator to the order of September 30, 1970, deal primarily with the disallowance or reduction of Relator's claims. However, they also include alleged errors in the conduct of the trial, particularly in our excluding from the evidence various reports and speeches, which

will be discussed later. Relator has also filed exceptions to the supplemental pretrial order, dated August 12, 1970, in which rulings of law were made. The first of these exceptions relates to the right to a jury trial, which question has become moot inasmuch as the Respondents withdrew their request for a jury trial. The second relates to the exclusive right of the Relator-Court to determine its financial needs. The next relates to the Mayor's authority to reduce an appropriation previously authorized by City Council. Finally, Relator questions the imposition of the burden of proof on Relator. These exceptions will also be discussed later in this opinion.

Respondents except to the allowance of the budgetary increases allowed in our order of September 30, 1970, and argue that either there was insufficient evidence to sustain them or there was no evidence to establish the fact that the City had acted arbitrarily or capriciously in denying them. They also except to the order of August 12, 1970, in the particulars, that this court misinterpreted the effect of the "lump sum" appropriations principle, as expressed in the Charter; erroneously held that a preliminary budgetary review by the Finance Director was not mandatory in all cases and that the Mayor could not reduce budgetary allowances to the courts after they were once adopted by ordinance; failed to find that the City Council had acted arbitrarily or capriciously; and denied their right to introduce evidence of the Relator-Court's inefficiency, waste, lack of co-operation, lack of control and supervision of its employees, and so forth.

Basically, the dispute involved here is an old one. It concerns the inherent right of courts to conduct their own affairs. Shall their budgets, services, salaries of personnel, construction and maintenance of court facilities, be subject to control by the executive and legislative branches of government, or shall the independence of the courts extend into these areas? Arguendo, Limiting judicial budgets not only deprives the courts of essential services but undermines the rights of litigants. A litigant who cannot get

a fair opportunity to he heard because of delay, inadequate facilities, underpaid, inefficient or unskilled court personnel is prejudiced and denied justice. It is useless to demand a high level of security and competence from the judiciary and then fail to provide them with adequate personnel and facilities. The cases are legion supporting the independence of the judiciary. However, when there is an attempt to draw a definite line between the authority of the judiciary and that of the other branches of government much uncertainty exists. In fact, it would appear that there is a recognition that the authority of the several branches of government overlap and that co-operation is required in solving their problems. Leahey v. Farrell, 362 Pa. 52, 66 A. 2d 577 (1949).

On the subject of the independence of the judiciary, as viewed by the courts of Pennsylvania, see Commonwealth ex rel. Hepburn v. Mann, 5 Watts & Sargent 403 (1843), wherein the Pennsylvania Supreme Court recognized the weakness of the judiciary in our system of government, such understanding having been stated by our Founding Fathers as follows: ". . . the judiciary is beyond comparison the weakest of the three departments of power; that it can never attack with success either of the other two; and that all possible care is requisite to enable it to defend itself against their attacks * * * . . . that 'there is no liberty, if the power of judging be not separated from the legislative and executive powers.' " ALEXANDER HAMILTON, THE FEDERALIST No. 78, From McLean's Edition, New York, MDCCLXXXVIII, No. 139, The Modern Library 504. See also Leahey v. Farrell, supra; Wilson v. Philadelphia School District, 328 Pa. 225, 93 A. 2d 834 (1953); Bailey v. Waters, 308 Pa. 309, 162 A. 819 (1932); Commonwealth ex rel. Attorney General v. Mathues, 210 Pa. 372, 59 A. 961 (1904); De Chastelleux v. Fairchild, 15 Pa. 18 (1850); and Case of

the Borough of West Philadelphia, 5 Watts & Sargent 281 (1843).[3]

Furthermore, there are recognized limitations on the independence of the courts in other ways. In a discussion by Mr. Justice Robert H. Jackson, Associate Justice of the United States Supreme Court, 1941-1954, in reviewing the position of that Court in the American system of government, he pointed out that even the Constitution makers left the United States Supreme Court in vital respects a dependent body, in that the political branches nominate and confirm the justices, indicating a political influence over its trend of decisions; in that its number may be altered by the other branches of government; in that its jurisdiction is limited, since it has appellate jurisdiction ". . . with such exceptions and under such regulations as Congress shall make"; in that it is also dependent upon the political branches for the execution of its mandates, for it has no physical force at its command, or, as the story has been told, ". . . President Jackson once withheld enforcement of a mandate that court, saying, 'John Marshall has made his decision:—*now let him enforce it!*'" THE SUPREME COURT: VIEWS FROM INSIDE, Ed. by Alan F. Westin (1st ed. W. W. Norton & Company, Inc. 1961), pp. 22-23. It is also dependent upon Congress for the appropriation of funds with which to operate. And as summed up by Justice Jackson, "These all add up to a fairly formidable political power over the Supreme Court, if there were a disposition to exert it." Id. at 23. It would thus seem that even the absolute power of the judiciary in its adjudicatory functions is subject to some limitations.

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[3] From other jurisdictions, see Smith v. Miller, 153 Col. 35, 384 P. 2d 738 (1963); Carlson v. State of Illinois ex rel. Stodola, 247 Ind. 631, 220 N. E. 2d 532 (1966); Knox County Council v. State ex rel. McCormick, 217 Ind. 493, 29 N. E. 2d 406 (1940); Florencio Lira v. L. A. Billings, 196 Kan. 726, 414 P. 2d 13 (1966); J. P. Harris v. Paul R. Shanahan, 192 Kan. 183, 387 P. 2d 771 (1963); In re Appointment of the Clerk of the Court of Appeals, (Ky.) 297 S. W. 2d 764 (1957); Gray v. Clerk of Common Pleas Court, 366 Mich. 588, 115 N. W. 2d 411 (1962); State v. Pfeiffer, 163 Ohio St. 149, 126 N. E. 2d 57 (1955).

The powers of Relator-Court are derived from the Constitution of Pennsylvania, Article V, §1: "The judicial power of the Commonwealth shall be vested in a unified judicial system consisting of the Supreme Court, the Superior Court, the Commonwealth Court, courts of common pleas, community courts, municipal and traffic courts in the City of Philadelphia, such other courts as may be provided by law and justices of the peace." And specifically as to the courts of common pleas, Art. V, §5 states, "There shall be one court of common pleas for each judicial district . . . (b) having unlimited original jurisdiction in all cases except as may otherwise be provided by law." Supplementing the powers bestowed upon the courts of common pleas by the Constitution, the General Assembly has legislated the matters over which it has jurisdiction, including those matters cognizable in equity. Further, the courts have been delegated many other duties and privileges, including, among other things, the right to appoint tipstaves, constables, probation officers, and their assistants, and to fix their salaries, etc. See 17 P. S. §281 et seq.

In Philadelphia County, as early as 1843, the Common Pleas Court was given the power to appoint tipstaves or constables. Act of February 3, 1843, P. L. 8, §6, 17 P. S. §476. In 1913 the Municipal County Court of Philadelphia was given the right to appoint tipstaves and officers, or employees, as are reasonably necessary, the number of same and their compensation to be determined by the board of judges. Act of July 12, 1913, P. L. 711, as amended, 17 P. S. §686. See Act of 1911, P. L. 1055, 19 P. S. §1053, as to probation officers. Although in some counties the law has been changed by the establishment of salary boards to fix the number and salaries of court employees, Second Class County Code, Act of July 28, 1953, P. L. 723, art. XVIII, §1820, 16 P. S. §4820, and The County Code, Act of August 9, 1955, P. L. 323, §1620, 16 P. S. §1620, we find no such act applicable to Philadelphia County.

The Act of May 2, 1945, P. L. 375, §1, conferred upon councils of cities of the First Class the power and duty to

fix salaries, wages, and other compensation payable out of the treasury of such cities, *except* the salaries of elected officers, which are or may be fixed by law, and except salaries, wages and other compensation of officers, clerks, and employees of the courts, which are or may be fixed by law, *or by the courts.* The Act of May 2, 1947, P. L. 134, §2, 53 P. S. §13401, re-enacted the Act of 1945, P. L. 375, §1. However, it changed it in the particular that it was rewritten to include the right of City Council to fix the salaries, wages, and compensation of public officers, clerks, and employees whose salaries were previously fixed by law or by the courts. Thus, the City's right to fix salaries was enlarged to include court employees. However, in neither act do we find anything to indicate that it was the intention of the General Assembly to invest First Class Cities with the power to determine the number of employees or other requirements of the courts. It is now earnestly contended by Respondents that the Home Rule Charter vesting in the City the power and duty of fixing all appropriations in a "lump sum" accomplished this change, i.e., that the City now has the right and duty not only to determine the salary of court employees but also their number. This contention is not acceptable.

Article IX, §2, of the Pennsylvania Constitution, provides that municipalities shall have the right to frame and adopt Home Rule Charters. The First Class City Home Rule Act, Act of April 21, 1949, P. L. 665, 53 P. S. §13101 et seq., as amended by the Act of March 19, 1951, P. L. 51, §1, 53 P. S. §13109, provided the procedure for doing so. The constitutional provision states, "A municipality which has a home rule charter may exercise any power or perform any function *not denied* by this Constitution, by its home rule charter, or *by the General Assembly at any time.*" (Emphasis supplied.) The Philadelphia Home Rule Charter is found in the Pamphlet Laws of 1951-1952, at page 2225. It is Art. II, Chapter 3, §2-300, of the Charter on which Respondents rely in support of their contention. That section provides that it shall be the duty of Council to adopt the annual

operating budget ordinance for the next fiscal year; that it shall provide for discharging any deficits and shall make appropriations to the Council, the Mayor, and all officers, departments, boards, and commissions which form a part of the executive or administrative branch of the city government, *and for all other items which are to be met out of the revenue of the City.* It provides further that all appropriations shall be made in lump sum amounts and according to the following classes of expenditures for each office, department, board or commission: (a) personal services, (b) materials, supplies and equipment, (c) debt service; and (d) such additional classes as the Mayor shall recommend in his proposed annual operating budget ordinance. Nowhere in the Charter, which generally is applicable to the administration of the city government in its executive and legislative functions, do we find anything specifically authorizing it to determine the number of employees or other needs of the courts and we do not interpret the provision that appropriations be made in a lump sum as establishing this change. We therefore conclude that the City is in the same position in that regard under the Charter as it occupied before the Charter was adopted. That was to determine and provide for the financial needs of the courts, based upon the number of employees and other services, supplies, equipment, etc., which were reasonably needed. The fact that appropriations are to be made in a lump sum of money does not, in our opinion, give to the City the exclusive right to determine the needs of the courts, either in the number of employees or in other services, equipment, et cetera. However, inasmuch as the City is defraying the expenses of such items, we do not withdraw from it the right to question the reasonable necessity for such items as may be sought by Relator-Court.

In the Supplemental Pretrial Order filed in this case on August 12, 1970, it was held, inter alia, ". . . the plaintiff Court does not have the exclusive right to determine its own financial needs for said purposes," i.e., to effectively perform its "continuing functions." That order also held

that "Such determination is to be made by City Council only after giving careful consideration to the amount requested by the Courts, which determination is subject to judicial review . . . requiring co-operation between the two branches of government in making this decision." This ruling is affirmed.

This leads to the next issue before us; and that is whether or not the burden was on the Relator to establish arbitrariness and capriciousness on the part of the City, as Respondents contend; or whether the burden was upon Respondents to establish that the demands of Relator-Court were unreasonable or unnecessary. We have ruled that in a proceeding in mandamus, as in other proceedings, the burden is on the plaintiff to establish his case. 11 Standard Pennsylvania Practice 297, and cases cited therein. In the preliminary order we placed that burden on Relator but limited it to establishing that the demands being made by Relator-Court were reasonably necessary to enable it to perform its continuing functions as the judiciary of the City; and further it was ruled that mere proof of a demand for additional funds and the refusal of the City to authorize same would not be considered as sufficient in meeting that burden. This is consistent with the established budgetary practice of requiring the submission of financial needs first to the Finance Director, and of discussing those needs with him for the purpose of establishing that they are reasonably necessary, as established in Leahey v. Farrell, supra. If a mere demand was all that was required, such procedure would not be necessary and all that would be required would be a requisition for funds. Leahey v. Farrell, supra, requires more than a mere requisition but does not require a showing of arbitrariness or capriciousness as the reason for a refusal.

In this connection, it is contended by Respondents that the Relator-Court has not followed the mandate of Leahey v. Farrell, supra, which requires compliance with statutory procedures. The basis for this argument is that some of the requests made by the Relator-Court to Council were not

first made to the Finance Director. This argument is not tenable in light of the fact that the total appropriation made by the City and the additional appropriation ordered by this court was less than the total originally requested on the forms submitted to the Finance Director, the Relator-Court's original request to the Finance Director having been $19,706,278, as previously stated herein, and the total sum appropriated by the City for the Courts of Common Pleas and Municipal Court, plus the additional sum allowed in the order of September 30, 1970, being $18,946,263. Consequently, the result is that Relator-Court has been granted less than it originally requested. Therefore, the mandate of Leahey v. Farrell, supra, has been complied with. For that reason, the exception on this point will be dismissed.

Respondents also except to our prior ruling, that, once the City has set the judicial budget, the Mayor may not subsequently compel reasonable reductions in it under Section 8-102 of the Charter. We overrule this exception for the reason that, once the reasonable needs of the Relator-Court have been agreed to by the City, the latter is without power or authority to revoke that approval. There is a decided distinction between the City adjusting for budgetary purposes the affairs of the executive and administrative departments of the City, over which it has complete control, and interfering with the affairs of the Relator-Court, over which it has no control, except that it must defray the reasonable expenses for the Relator-Court to function. Section 8-102 of the Charter, on which Respondents rely, provides, "In order to enable the Mayor to avoid deficits and to check on performance, each officer, department, board and commission of the City, or other agency receiving a City appropriation shall . . . submit estimates of budgetary requirements at the request of the Mayor." However, it is specifically provided therein that he shall not reduce the estimates of City Council or of the Auditing Department without their consent and only within limits shall he reduce the extent of the budget of the

Personnel Director or the Civil Service Commission. The Courts of Philadelphia do not fall into any of these classes. They are not a department, board, commission, or agency. The judiciary is a separate branch of government and this provision is inapplicable to its budgetary allowances, which, for that reason, are entitled to more consideration than those of the preferred branches of the City government. This exception will therefore be dismissed.[4]

For the same reason we ruled that the Respondents could not introduce evidence of any inefficiency, waste, lack of co-operation, lack of control and supervision over the court employees. No such power is to be found in the Charter or in any enactment of the General Assembly even suggesting such right of interference with the operations of the courts by the legislative body. This exception will likewise be dismissed.

Before disposing of the exceptions to the various budgetary requests allowed, disallowed, or reduced in the order of September 30, 1970, we shall first dispose of the other exceptions filed by the Relator. Relator's Exception (2) is to the supplemental pretrial order of August 12, 1970, wherein we held in Paragraph B(1)(2) that the Relator-Court does not have the exclusive right to determine its own financial needs for said purposes. This is dismissed for the reasons heretofore discussed.

Relator's Exception 1(3) to Paragraph B(3)(b), relating to the Mayor's authority under Charter provision §8-102 to reduce appropriations, shall be dismissed for the reasons hereinbefore set forth.

Relator's Exception III to the ruling of the court in rejecting the offer of Relator's Exhibits 1, 3, 7, 8, 9, 10, 12, 13, 14, 17, and 20, which were voluminous speeches, opinions, and reports, will be dismissed. These offers were properly

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[4] It was for this same reason that we granted an injunction against the enforcement of the "Job Freeze" order of Mayor Tate, which was intended to prevent the courts from filling vacancies in their personnel staffs. No exception has been taken to this action.

rejected as incompetent, being private writings and not proof of the facts therein stated. 14 P. L. E. Evidence §224.

The following principles of law are applicable to the action in mandamus:

1. Mandamus is an extraordinary writ which is appropriate to compel performance only where there is a clear legal right in the plaintiff and a corresponding duty in the defendant and a want of any other appropriate and adequate remedy. Unger v. Township of Hampton, 437 Pa. 399, 263 A. 2d 385 (1970); Garchinsky v. Borough of Clifton Heights, 437 Pa. 312, 263 A. 2d 467 (1970).

2. Mandamus will not issue to compel the performance of a series of acts by a judicial officer nor to compel performance of other acts of a continuous nature. It may be used only to coerce single acts of specific and imperative duty. Russell v. Osser, 437 Pa. 45, 261 A. 2d 367 (1970).

3. Although a legal action, mandamus is equitable in nature. Dombrowski v. Philadelphia, 431 Pa. 199, 245 A. 2d 238 (1968); Hotel Casey Company v. Ross, 343 Pa. 573, 23 A. 2d 737 (1942).

4. A writ of mandamus does not issue as of course at the suggestion of the plaintiff or as a matter of strict legal right, but must be specially allowed by a court and is a matter for the discretion of the trial court. Dombrowski v. Philadelphia, supra; Commonwealth ex rel. Allesandroni v. Confluence Borough, 427 Pa. 540, 234 A. 2d 852 (1967).

5. Mandamus may not compel a body invested with discretionary power to exercise that power in a certain manner or to arrive at a certain decision, but mandamus will lie to compel a body so empowered to exercise its discretion within the prescribed limits. Taylor v. Abernathy, 422 Pa. 629, 222 A. 2d 863 (1966).

6. Although the court will not issue a writ of mandamus where it is apparent that the writ will be futile or ineffectual, Commonwealth ex rel. McLaughlin v. Erie County, 375 Pa. 344, 100 A. 2d 601 (1953), merely showing the inability of a defendant to obtain financing to carry out a mandate is not a sufficient defense in an action of mandamus. Commonwealth ex rel. Allesandroni v. Confluence Borough, supra.

The evidence is abundantly clear to establish the fact that the amount recommended by Mayor Tate and approved by Council is inadequate to meet the reasonable needs of the Relator-Court for the present fiscal year.

Probation.

The Probation Departments are seriously undermanned by probation officers and clerical assistants. The overall case load in the Adult Department is 154 cases for each probation officer, with some probation officers supervising over 200 cases. Against this, the national standard is 50 cases per officer, which is the recommended maximum. The number of such cases under supervision has increased from a total of 6,900 at the beginning of 1969 to 13,646 by the end of March of 1970, with the number continuing to increase, to the extent that a total of 19,000 is anticipated by the end of 1970. This has occurred without an increase in the number of supervising officers or clerical aides.

Likewise, in the Juvenile Department, where the number of supervised cases has been substantially increased without an increase in the number of supervising personnel; so that each of the present officers in this department now supervises more than three times as many cases as the national average dictates.

Studies have been made to secure answers to this problem and suggestions such as referring cases to the State Parole Board, or combining the two departments, the Adult

and Juvenile, for economy reasons have been considered. However, these suggestions have been discarded as unworkable since the supervisors of the State Board of Parole are presently overloaded with cases to be supervised; and no economies are presently foreseeable from a consolidation of the two departments.

Although Relator reduced his request in this area to a total of $1,416,969 for both departments, this court reduced it further, to a total sum of $1,050,000. This reduction was not due to any conclusion that additional personnel were not reasonably necessary but because of the lapse of time already run during the fiscal period and further because of the foreseeable and probable delays in securing and training suitable personnel to perform this specialized work. This is a situation which has existed for some time. We do not believe it can be remedied completely during the remaining period of this fiscal year. However, the allowance included in our order of September 30, 1970, for the Probation Departments will enable Relator-Court to make great progress in correcting this situation in a large measure during this period.

Data Processing.

We had no difficulty in finding that the additional sum allowed in our order for data processing is reasonably necessary for the efficient operation of the Relator-Courts. Although the City granted the sum of $73,068 for this purpose in its budgetary ordinance, this was greatly inadequate. Relator-Court presently utilizes a computer system which is recognized as an advancement in the judicial field. However, without the additions contemplated by Relator-Court, it is inadequate as presently installed to perform all the functions reasonably needed for the disposition of cases. The Relator-Court, with a backlog of some 25,000 civil cases, which involves a delay of three and one-half years in bringing them to trial, with criminal cases in such num-

bers that at least one year passes between indictment and trial, with the operation of the juvenile division, the domestic relations division, the orphans' court division, to operate in an effective manner the Relator-Court requires the most up-to-date business equipment that the City can afford. Modern Business has recognized this need for its purposes. The needs of the judiciary are no less pressing. In the long run, this will result in economies and the saving of money for the City. Although the Relator-Court requested an additional sum of $434,175 for this purpose, with the expiration of part of the fiscal period during which the salaries of contemplated additional personnel were not utilized, and the delay involved in securing and having installed additional equipment, we concluded that an additional $250,000 was adequate to supply this need during the balance of this fiscal year.

Apprehension of Fugitives.

The allowance for the apprehension of fugitives is not in serious dispute. There are about 6,000 persons who have been released on bail who have not responded when summoned for trial or sentence. The City admits the need for an appropriation of $300,000 for this purpose but questions the propriety of including it in the Relator-Court's budget or in this writ of mandamus. The Relator agrees that the required amount of money for this purpose is $284,322. We have allowed $285,000, with the provision that said sum may be diverted to some other agency of government, which may perform this service, i.e., the District Attorney, the Sheriff, the Police—whichever apprehends these fugitives. However, the problem is primarily that of the Relator-Court, which has assumed responsibility for the release of these prisoners. If none of the other agencies apprehends them, then it will be the responsibility of the Relator-Court to see that they are arrested. For that reason, we are of the opinion that this service is reasonably neces-

sary for the continuing function of the Relator-Court and should be included in the mandamus order.

Courtroom Personnel.

The Relator-Court's initial request for additional courtroom personnel was $451,488, divided as follows: $224,452 for 32 persons to serve in six newly planned courtrooms in City Hall and $227,036 for 23 such persons to serve in new courtrooms being planned for the Gibson Building. This request was in addition to the $100,000 additional allowed in the original budget for personnel to serve in the Gibson Building. However, this claim has now been reduced to $265,938 to cover 22 persons to serve in the new City Hall courtrooms for a ten-month period and to cover the same number, 22 persons, to serve in the Gibson Building for a six-month period.

The claim for the Gibson Building personnel was disallowed completely, for the reason that it appears that this building will not be ready for court occupancy until after the present year ends. The other claim, for City Hall courtroom personnel, was reduced for a similar reason. Since the Gibson Building will not be ready for occupancy during the present fiscal year, the Probation Department will be delayed in moving there from City Hall. Thus the space in City Hall for two of the courtrooms contemplated by the Relator-Court in its planning will not be occupied during this period. There will be only four new courtrooms in City Hall to be supplied with additional personnel during this period instead of six.

Particularly for the above reasons and also because of the expiring of additional time during the present fiscal year, the total request for additional personnel made by the Relator-Court was reduced to $100,000, in addition to the $100,000 allowed by the City in its original budget. It is peculiarly within the judgment of the Relator-Court to determine its necessary requirements in the field of per-

sonnel, particularly in manning its courtrooms. For that reason, we are not inclined to question that judgment to any great extent. However, we cannot keep from noting that the original $100,000 budgeted for personnel in the Gibson Building and $57,940 for necessary supplies and materials for use therein may not be expended during this fiscal year. The additional amount of $100,000 allowed in our order represents a proper allowance under all the circumstances.

Attorney Fees.

The Act of January 19, 1968, P. L. (1967) ——, No. 438, §1, 19 P. S. §791, and the Act of July 22, 1970, P. L. No. 180, provide for the payment of court appointed attorneys by counties of the First Class, which includes Philadelphia, said payments to be within limits to be set by the court. Under an arrangement between the Relator-Court and the City Solicitor, petitions for such payments received from appointed lawyers are channeled through the City Solicitor for evaluation and recommendation. Although there is no evidence that such court orders for payment have not been paid by the City, the obligation is primarily a judicial one. For that reason, a budgetary item should cover it and provision made for payment. The sum requested by the Relator-Court of $300,000 has therefore been allowed as reasonably necessary for that purpose.

Arbitration Fees.

The benefits derived from the arbitration of cases needs little, if any, discussion. In 1969, 4,706 cases were disposed of by this method. On the basis of an estimate of 5,000 cases for the current year, the Relator-Court originally requested of the Finance Director the sum of $550,000. This was an increase of $115,000 over the budgetary allowance

for the prior year. Within that increase was a contemplated increase in the arbitration fees. The Act of August 27, 1963, P. L. 1393, §1, 5 P. S. §129, gives to the courts the right to fix the compensation of arbitrators. At the Council session the Relator-Court increased its estimate of the number of cases to be disposed of by this method to 7,500 and sought to have $825,000 budgeted for this purpose. The City refused to increase the item over the amount allowed in previous years and allowed the same amount, $435,000.

The evidence clearly discloses an additional need because of a reasonable increase in the fees of the arbitrators and the increase in the number of cases to be disposed of by this method. Although we are not convinced that the Relator-Court's estimate of 7,500 is correct, it seems to be beyond question that an additional $200,000 will be needed for this purpose.

Writ Service.

Under the new Philadelphia Municipal Court Act, Act of October 17, 1969, P. L. ——, No. 105, §6, 17 P. S. §711.7, writs and pleadings of that court may be served by writ servers appointed by the Municipal Court at an estimated cost of $5.00 per service, which shall be charged as part of the costs of each case. On an estimate of 20,000 services during the present fiscal period, the Relator seeks $100,000 to establish the system. This fund is intended to be a revolving fund, the collections from the costs of each case to replace expenditures from the fund. While it may develop that collections may avoid the use of part of this fund and that most of it may not be used, thus relieving the City from making payment of most of this item, the sum of $75,000 was allowed as a budgetary item for the balance of the present fiscal year, as a reasonably necessary item.

Law Clerks.

Law clerks are an absolute necessity for any judge who is busily engaged in the trial of cases, which leaves him little time for research and opinion writing. We are convinced that it is reasonably necessary to provide each such judge with a law clerk. There are 56 Common Pleas Court Judges and seven Municipal Court Judges learned in the law whose services are being used in the trial of cases in the Philadelphia Courts of Common Pleas. There are only 44 law clerks to serve them. We have allowed $100,000 for the employment of additional law clerks for the balance of the fiscal year, reducing Relator's claim of $133,206 because of the lapse of time.

Copy System.

Relator's request for $23,000 for a total copy system has been allowed as reasonably necessary in the light of the great amount of work copying papers required by a court this size and in the light of modern business practices which seek to avoid as much manual effort on the part of stenographic personnel as possible.

Crime Commission.

This item of $75,000 is in a state of confusion. It represents a grant for one year from the United States government for the study of crime. It was or will be paid directly to the Relator-Court, which theoretically should return it to the City if it is to be included in the budget. If it is included as a budgetary item but has already been paid to the court and not turned over to the City, the City will not be required to pay it again. By Ordinance (Bill No. 1723) adopted May 6, 1970, the City appropriated

$75,000 for this purpose, to be included in the 1969-1970 Budget. However, this appears to have been in error. The appropriation should have been made in the 1970-1971 Budget. To correct that error, this item in the current budget is being allowed, the sum received by the Relator-Court from the United States Government to be held in payment of same. Under this arrangement, the City will sustain no prejudice.

Disallowed Items.

The disallowance of the personnel item for the Gibson Building has already been discussed.

The Bail Project request for $145,811, as reduced, has been disallowed because of its nature. The setting of bail is a judicial function; however, relieving the congestion in Holmesburg Prison and other places of incarceration and the supervision of persons released on bond or on their own recognizance so as to assure their appearance in court when wanted fall without the limits of judicial responsibility and into that of the administrative branches. We appreciate the laudable motives of the Relator-Court in what it seeks to accomplish, but we cannot approve its request for that purpose as one reasonably necessary for the performance of its judicial function. To determine the worthiness of prisoners to be released on nominal bail or on their own recognizance, the Relator-Court may seek the assistance of the District Attorney in supplying the records of such prisoners, in interviewing the prisoners personally, or in securing the recommendations of the officials of the institution in which such persons are confined, without the necessity of employing separate investigators for that purpose.

The request of $88,335, as reduced, for microfilming court records was disallowed as not being a judicial function. Although the records to be filmed are court records, the storage of same appears to be administrative. The same reason is assigned for disallowing the request of $400,000

for repairs to 1801 Vine Street; $24,500 for relocation of Probation Office; $129,449 for Building Services; and $47,431 for Janitorial Services.

Considering the fact that the Relator-Court's total budget will be almost $19,000,000, including the sums allowed in the order of this court, and that it is established on a lump sum basis and not on a "line" or specific purpose basis, it affords Relator-Court much freedom in readjusting its requirements for particular purposes as experience may dictate. For that reason, the following items have been disallowed: Dental Equipment, $10,413; Domestic Relations, $51,593; Station Wagon, $2,320. However, if an immediate need develops for any of the latter items, the opportunity remains for the Relator-Court to seek through the Finance Director the approval of supplementary budgetary allowances, as has been the practice in the past.

Although we have analyzed the separate items claimed by the Relator-Court in the same manner as the Finance Director may do so, the fact remains that the total lump sum appropriation is the main objective. We are satisfied, that with that total, as adjusted under the order, the Relator-Court can perform its continuing functions effectively during the balance of the 1970-1971 fiscal year. It may and will undoubtedly desire to improve its operations, and with the addition of more judges, of which it is in serious need, it will need much more financial aid for such purposes. This need, of necessity, will have to be met in future budgets. Our order is based entirely on present conditions.

In resolving this matter, we are not unaware of the problems of finance confronting the City. However, under Commonwealth ex rel. Allesandroni v. Confluence Borough, supra, we have not permitted this consideration to influence our decision.

ORDER OF COURT.

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
COMMONWEALTH OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County, Plaintiff, v. JAMES H. J. TATE, Mayor of Philadelphia, et al., Defendants.	Trial Division— Civil Section No. 3084 June Term, 1970

AND NOW, November 2, 1970, after oral argument and consideration of briefs, Relator's Exceptions I(1) to (4), II(1) to (17), and III(1) are all dismissed; and further, Respondents' Exceptions I(1 to 5) and II are likewise dismissed; and

IT IS ORDERED AND DIRECTED that the Prothonotary enter judgment for Relator and against Respondents; and forthwith issue a peremptory writ in mandamus upon Hon. James H. J. Tate, Mayor of Philadelphia; Romanus J. Buckley, Finance Director of the City of Philadelphia; Phillip M. Poorman, Treasurer of the City of Philadelphia; Paul D'Ortona, President of the City Council of Philadelphia; and all other members of City Council as follows: William F. Boyle, Edgar C. Campbell, Sr., Edward R. Cantor, Thomas M. Foglietta, John B. Kelly, Jr., Thacher Longstreth, William Cottrell, William A. Cibotti, Charles L.

Durham, George X. Schwartz, Thomas McIntosh, Joseph L. Zazyczny, Harry P. Jannotti, David Cohen, Isadore H. Bellis, and David Silver, directing the Respondents to appropriate and provide for the payment of same to the Relator-Court, for the use of the Court of Common Pleas and Municipal Court of Philadelphia during the unexpired period of the fiscal year, July 1, 1970, to June 30, 1971, in the same manner as it receives existing appropriations, and in addition thereto, the sum of Two Million Four Hundred Fifty-Eight Thousand ($2,458,000) Dollars.

Costs to be paid by Respondents.

BY THE COURT:
S/ MONTGOMERY, Judge
Specially Presiding.

APPENDIX "B."

OPINION OF THE COURT.

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IN THE

SUPREME COURT OF PENNSYLVANIA.

EASTERN DISTRICT.

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County, v. JAMES H. J. TATE, Mayor of Philadelphia, et al., Appellants.	No. 297, Miscellaneous Docket No. 18. Appeals from the Judgment of the Court of Common Pleas, Philadelphia County, as of June Term, 1970, No. 3084.

BELL, C. J. Filed: February 16, 1971.

On June 16, 1970, President Judge Vincent A. Carroll, individually and on behalf of all of the Judges of the Court of Common Pleas of Philadelphia, instituted this suit by a Complaint in Mandamus to compel the Mayor and City Council of Philadelphia to appropriate the additional funds requested by them for the important and necessary administration of the Court of Common Pleas of Philadelphia for the fiscal year commencing July 1, 1970 and ending July 1, 1971.*

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* The various parties named as defendants are acting in their capacities as officials of the City of Philadelphia: James H. J. Tate, Mayor; Romanus J. Buckley, Finance Director; Philip M. Poorman, Treasurer; Paul D'Ortona, President of City Council; and all of the individual members of City Council.

We shall hereinafter set forth the intricate facts involved in this suit, but initially, we deem it important to focus on the fundamental questions involved: (1) whether the Judicial Branch of our Government has the inherent power to *determine* what funds are *reasonably necessary* for its efficient and effective operation; and (2) if the Judiciary has the power to determine what funds are reasonably necessary, does it then have the power to *compel* the Executive and Legislative Branches to provide such funds after the requested amount has been reduced in, or wholly or partially eliminated from, the budget proposed by the Executive Branch and approved by the Legislative Branch.

The Court of Common Pleas, pursuant to the Philadelphia City Charter of April 17, 1951, Section 8-103, on December 3, 1969, submitted to the City's Finance Director (on the necessary forms) its operating budget estimates of the financial needs of the Court of Common Pleas and the Municipal Court.* The total amount of requests submitted was $19,706,278. After several meetings between the Finance Director and representatives of the said Court, the sum was reduced to $16,488,263, and, on April 1, 1970, this amount was finally sent to City Council by the Mayor in his proposed annual operating budget message. On May 4, 1970, President Judge Carroll, Judge D. Donald Jamieson (now President Judge), and Administrative Judge Frank J. Montemuro, together with several members of their administrative staffs, gave extensive testimony before City Council, seeking to document their requests. The Court at this time also requested an increase of $5,230,817 over

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* The Court of Common Pleas of Philadelphia, which is the 1st Judicial District of the Commonwealth of Pennsylvania, has unlimited jurisdiction in all cases except as may otherwise be provided by law (or by the Supreme Court), and has appellate jurisdiction to review convictions in the Municipal Court of Philadelphia: Constitution of Pennsylvania, Article V, Sections 5 and 6, and Section 16(r) of the Schedule to the Judiciary Article. The administration of the Municipal Court is coordinate with the administration of the Court of Common Pleas, and the Municipal Court's financial requests and requirements are included in this complaint.

the amount proposed in the Mayor's aforesaid budget of April 1st. Of this sum of $5,230,817, $2,012,801 had not previously been requested of either the Finance Director or the Mayor prior to the time the Mayor submitted his budget. City Council denied this additional request and approved by ordinance, on May 28, 1970, the amount recommended by the Mayor, i.e., $16,488,263. This total was divided and allocated as follows:

Municipal Court Judicial Staff	$ 451,532
Common Pleas Court Judicial Staff	2,126,839
Common Pleas Court Administration	13,909,892
Total	$16,488,263

This present mandamus action was instituted on June 16, 1970 to compel the appropriation and payment of the Court's additional request of $5,230,817.

Proceedings Before Judge Montgomery

On June 23, 1970, Judge Harry M. Montgomery, of the Superior Court of Pennsylvania, was specially designated by this Court to hear and decide this case. Judge Montgomery promptly held a pre-trial conference, at which time the legal issues were delineated and an agreement was worked out by the parties that defendants would hold and keep available sufficient funds to pay any sums ultimately awarded to the Court. On July 27, 1970, Judge Montgomery issued a Pre-Trial Order, ordering the parties to argue and brief certain issues and temporarily enjoining the defendants from enforcing a "job freeze" ordered by the Mayor against the Court, and also from reducing the Court's budget. Oral argument was held on August 4, 1970, and Judge Montgomery filed a "Supplemental Pre-Trial Order" on August 12, 1970. In this Order, Judge Montgomery ruled, inter alia: (1) the Court had the burden of proof to establish the reasonable necessity of its

financial requests and none of the parties could take advantage of the usual presumption of reasonableness by virtue of their public office; (2) defendants, as a defense to plaintiff's demand for additional funds in this action of mandamus, could not "reopen" the earlier budget figures, which had been approved by the Mayor and for which appropriations had been made by the City Council, in order to prove that the present appropriation was being used inefficiently or that a more efficient use of present appropriations would cover some or all of the additional requested items; and (3) defendants had a right to a jury trial.* The record was closed on August 21, 1970, after extensive testimony had been taken and exhibits produced. At this time, the Court amended its request for funds by reducing the sum of $5,230,817 it had requested in the complaint to $3,962,532, mainly because of the delay in time from the start of the fiscal year (July 1, 1970).

On September 30, 1970, Judge Montgomery issued a mandamus Order against defendants to appropriate and pay the amount of $2,458,000, and made final his injunctive Order of July 27, 1970. A complete tabulation of the original request in the complaint, the amended request, and the final award of September 30, 1970 is as follows:

	Original Request	Amended Request	Court Order 9/30/70
Adult Probation	$1,782,216	$1,071,937	$ 800,000
Juvenile Probation	539,922	345,032	250,000
Data Processing	453,934	434,175	250,000
Apprehension of Fugitives	335,910	284,322	285,000
Courtroom Personnel	224,452	152,420	100,000
Attorney Fees	300,000	300,000	300,000
Arbitration Fees	390,000	390,000	200,000

* Defendants later withdrew their demand for a jury trial, and the case was tried before Judge Montgomery without a jury.

Writ Service	100,000	100,000	75,000
Gibson Building Personnel	227,036	113,518	Disallowed
Probation Relocation ...	24,500	24,500	Disallowed
Repairs—1801 Vine Street	40,000	40,000	Disallowed
Janitorial Staff	56,940	47,431	Disallowed
Microfilm	96,822	88,335	Disallowed
Bail Project	172,857	145,881	Disallowed
Dental Equipment	10,413	10,413	Disallowed
Domestic Relations	61,912	51,593	Disallowed
Total Copy System	23,000	23,000	23,000
Building Services	145,377	129,449	Disallowed
Law Clerks	133,206	133,206	100,000
Station Wagon	2,320	2,320	Disallowed
Prothonotary Relocation	35,000	Withdrawn	—
Crime Commission Grant	75,000	75,000	75,000
Totals	$5,230,817	$3,962,532	$2,458,000

Both parties filed exceptions to the Order of September 30, 1970, and also to the Supplemental Pre-Trial Order of August 12, 1970, and these exceptions were then argued before Judge Montgomery.* The exceptions were dismissed by Judge Montgomery on November 2, 1970, and final judgment was entered in the amount awarded by his Order of September 30, 1970. Both parties appealed to the Commonwealth Court, and thereafter, on November 12, 1970, a petition for plenary jurisdiction under Section 205 of the Appellate Court Jurisdiction Act of 1970 was granted by this Court.

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* The Court of Common Pleas petitioned this Court, on October 6, 1970, before the exceptions were filed, to assume plenary jurisdiction under Section 205 of the Appellate Court Jurisdiction Act of 1970. We denied this petition "without prejudice to file a subsequent petition at an appropriate time."

Court's Inherent Power

It is a basic precept of our Constitutional form of Republican Government that the Judiciary is an independent and co-equal Branch of Government, along with the Executive and Legislative Branches. *Stander v. Kelley,* 433 Pa. 406, 421-424, 250 A. 2d 474; *Leahey v. Farrell,* 362 Pa. 52, 66 A. 2d 577; *Wilson v. Phila. Sch. Dist.,* 328 Pa. 225, 228, 195 Atl. 90; *Commonwealth v. Mathues,* 210 Pa. 372, 423-425, 59 Atl. 961; *DeChastellux v. Fairchild,* 15 Pa. 18, 20; *Commonwealth v. Mann,* 5 W. & S. 403, 406, 408, 410, 420-421; *In re Surcharge of County Commissioners,* 12 Pa. D. & C. 471. The line of separation or demarcation between the Executive, the Legislative and the Judicial, and their respective jurisdiction and powers, has never been definitely and specifically defined, and perhaps no clear line of distinction can ever be drawn. However, we must, of necessity, from time to time examine and define some of the respective powers within these undefined boundaries.

Because of the basic functions and inherent powers of the three co-equal Branches of Government, the co-equal independent Judiciary must possess rights and powers co-equal with its functions and duties, including the right and power to protect itself against any impairment thereof. See *Commonwealth v. Mann,* 5 W. & S., supra; *Leahey v. Farrell,* 362 Pa., supra; *Wilson v. Phila. Sch. Dist.,* 328 Pa., supra.*

Expressed in other words, the Judiciary *must possess* the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties

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* The authorities of other jurisdictions on the separation of powers and problems arising from the inherent weakness of the Judiciary Branch are legion. See, e.g., **Smith v. Miller,** 153 Colo. 35, 384 P. 2d 738; **Carlson v. State ex rel. Stodola,** 247 Ind. 631, 220 N. E. 2d 532; **Florencio Lira v. L. A. Billings,** 196 Kan. 726, 414 P. 2d 13; **In re Appointment of Clerk of Court of Appeals,** 297 S. W. 2d 764 (Ky.); **Gray v. Clerk of Common Pleas Court,** 366 Mich. 588, 115 N. W. 2d 411; **State v. Pfeiffer,** 163 Ohio St. 149, 126 N. E. 2d 57.

to administer Justice, if it is to be in reality a co-equal, independent Branch of our Government. This principle has long been recognized, not only in this Commonwealth but also throughout our Nation. See, e.g., *Leahey v. Farrell,* 362 Pa., supra; *Commonwealth v. Mann,* 5 W. & S., supra; *Commissioner v. Hall,* 7 Watts 290; *Commonwealth v. Brownmiller,* 141 Pa. Super. 107, 111, 14 A. 2d 907; *In re Surcharge of County Commissioners,* 12 Pa. D. & C., supra; *Carlson v. State ex rel. Stodola,* 247 Ind. 631, 220 N. E. 2d 532; *Noble County Council v. State ex rel. Fifer,* 234 Ind. 172, 125 N. E. 2d 709; *Knox v. State,* 217 Ind. 493, 29 N. E. 2d 405; *Judges for Third Judicial Cir. v. County of Wayne,* 172 N. W. 2d 436; *Smith v. Miller,* 153 Colo. 35, 384 P. 2d 738; *In re Appointment of Clerk of Court of Appeals,* 297 S. W. 2d 764 (Ky.); *State ex rel. Schneider v. Cunningham,* 39 Mont. 169, 101 Pac. 962; *State ex rel. Kitzmeyer v. Davis,* 26 Nev. 373, 68 Pac. 689; 20 Am. Jur. 2d, *Courts,* §§78, 79; 21 C. J. S., *Courts,* §14; Kaplan, *There Must Be No Interference with the Courts,* VI, Munic. Ct. Rev. 15.

The very genius of our tri-partite Government is based upon the proper exercise of their respective powers together with harmonious cooperation between the three independent Branches. *Leahey v. Farrell,* 362 Pa., supra (page 57). However, if this cooperation breaks down, the Judiciary must exercise its inherent power to preserve the efficient and expeditious administration of Justice and protect it from being impaired or destroyed. *Leahey v. Farrell,* 362 Pa., supra (pages 57-58, 59-60); *Commonwealth v. Brownmiller,* 141 Pa. Super., supra; *In re Surcharge of County Commissioners,* 12 Pa. D. & C., supra (page 475).

Reasonable Necessity

In the leading case of *Leahey v. Farrell,** 362 Pa., supra, the Court of Common Pleas of Cambria County entered a mandamus Order against the County Commissioners and

* This case is relied upon by both parties.

County Controller to compel the payment of funds necessary for salary increases given to the Court stenographers. The Court of Common Pleas had entered the Order *without* first complying with the provisions of Section 23 of the Act of July 5, 1947, P. L. 1308, 16 P. S. §304, which required submission of salary increases of Court personnel to the County Salary Board. This Court reversed the lower Court Order because there was no attempt to first comply with the statutory provisions of administrative procedure for salary increases.* However, in *Leahey*, we reaffirmed the inherent powers of the Judiciary to mandamus the payment of sufficient funds out of the public treasury for the efficient administration of the Judicial Branch of Government. The Court pertinently said (pages 57-58): "Should Commissioners, however, neglect or refuse to furnish funds, or sufficient funds, for reasonable judicial functions, and in consequence the efficient administration of the judicial branch of the government is thereby impaired or destroyed, the courts possess the inherent power to require such necessities to be furnished and to direct payment therefor out of the public treasury: see numerous cases cited in 15 C. J. section 272, p. 900 et seq.; 7 Ruling Case Law 'Courts' section 12, p. 985; section 62, p. 1033; County of Lancaster v. Brinthall, 29 Pa. 38; McCalmont v. The County of Allegheny, 29 Pa. 417. See comprehensive opinion of Chief Justice MAXEY (then a judge of the Court of Common Pleas of Lackawanna County). In re Surcharge of County Commissioners, 12 D. & C. 371. In that case, it was held that a judge of a court of common pleas possessed the power to appoint a 'secretary or clerk', *where no statutory provision existed for such appointment*,** at a salary fixed by the court, to be paid by the county. The only limitation on

* This problem is not at issue in the instant case because the Court of Common Pleas properly conformed with all the requirements of Section 8-103 of the Philadelphia City Charter of April 17, 1951 and all other administrative procedures, before both the Mayor and City Council, before instituting suit.

** Italics in **Leahey v. Farrell.**

this power was held to be that such appointment should be reasonably necessary. This decision is an accurate statement of the law, with which we are in complete accord.[*]

". . . Should the legislature, or the county salary board, act arbitrarily or capriciously and fail or neglect to provide a sufficient number of court employes or for the payment of adequate salaries to them, whereby the efficient administration of justice is impaired or destroyed the Court possesses inherent power to supply the deficiency. Should such officials neglect or refuse to comply with the reasonable requirements of the court, they may be required to do so by mandamus."*

Leahey correctly holds (by necessary implication) that the burden is on the Court to establish that the money it requests is reasonably necessary for "the efficient administration of justice." If a Court is unable to provide an efficient administration of Justice because of insufficient funds to have adequate personnel, or reasonable salaries for personnel, or for other necessary Court administration services, or for construction and maintenance of essential Court facilities, then our whole system of Justice and its adminis-

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* The test in **In re Surcharge of County Commissioners,** 12 Pa. D. & C., supra (adopted in **Leahey**), was stated thus (at page 475): "That courts have inherent power to do all things that are reasonably necessary for the proper administration of their office within the scope of their jurisdiction is a well-settled principle of law."

* It is well settled, as all the parties agree, that "Mandamus is an extraordinary writ which lies to compel the performance of a ministerial act or mandatory duty where there is **clear** legal right in the plaintiff, a corresponding duty in the defendant, and a want of any other appropriate and adequate remedy: Borough of Easton v. Lehigh Water, 97 Pa. 554, 560; Goodman v. Meade, 162 Pa. Superior Ct. 587, 60 A. 2d 577. However, even in such cases its issuance [mandamus] is not a matter of right but in certain circumstances is a matter for the sound discretion of the court: Waters v. Samuel, 367 Pa. 618, 80 A. 2d 848." **Travis v. Teter,** 370 Pa. 326, 330, 87 A. 2d 177. This principle was reiterated in **Boslover A. A. B. Assn. v. Philadelphia Redevelopment Authority,** 425 Pa. 535, 538, 229 A. 2d 906, and in **Unger et al. v. Hampton Township,** 437 Pa. 399, 401, 263 A. 2d 385.

tration will undoubtedly be greatly impaired, if not destroyed.

The confidence, reliance and trust in our Courts and in our Judicial system on the part of the Bench and the Bar, as well as the general public, have been seriously eroded. We cannot permit this to continue. In order to improve and expedite Justice, it is both important and imperative that we re-examine and re-evaluate our Courts and their administration, our Judicial processes and our entire Judicial system.

The demands upon our Judicial system have increased tremendously in the last decade, especially in the criminal field. Violent crimes have increased 10% or more every year.* The increase in criminal and civil trials, and the number of required pre-trial, pre-sentencing and post-trial hearings have virtually swamped the Courts of this Commonwealth, particularly in Philadelphia. New programs, techniques, facilities and expanded personnel have been and will continue to be necessary to meet the mandate of providing and administering a more efficient Judicial system and making Justice for all speedier and more certain.

Defendants contend, inter alia, that the overall problem of financial difficulties which undoubtedly confront and harass the City of Philadelphia should be considered in determining what is "reasonably necessary" for the "efficient administration of Justice by the Courts." The demand, often amounting to necessity, for additional funds for both the maintenance and the improvement of public services and general public welfare, and the essential increases in wages, and the unfortunate rise in costs of nearly every description, is widespread. Nevertheless, the deplorable financial conditions in Philadelphia must yield to the Constitutional mandate that the Judiciary shall be free and independent and able to provide an efficient and effective system of Justice.

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* See the Annual and Semi-Annual Reports of the F.B.I. Crime Index.

The Court does not have *unlimited* power to obtain from the City whatever sums it would like or believes it needs for its proper functioning or adequate administration. Its wants and needs must be proved by it to be "reasonably necessary" for its proper functioning and administration, and this is always subject to Court review.

Mr. Chief Justice MARSHALL said in *McCulloch v. Maryland,* 17 U. S. 316, 431, "the power to tax involves the power to destroy; . . ." A Legislature has the power of life and death over all the Courts and over the entire Judicial system. Unless the Legislature can be compelled by the Courts to provide the money which is reasonably necessary for the proper functioning and administration of the Courts, our entire Judicial system could be extirpated, and the Legislature could make a mockery of our form of Government with its three co-equal branches—the Executive, the Legislative and the Judicial.

We have carefully considered all of the defendants' contentions, as well as all of the Court's contentions, but deem further discussion thereof unnecessary.

We agree with Judge MONTGOMERY'S conclusion that "the amount recommended by Mayor Tate and approved by Council is inadequate to meet the reasonable needs of the Court [of Common Pleas] for the present fiscal year." We also agree with his Order of September 30, 1970, allowing the Court $2,458,000. This represents his allowance and specific allocation of certain of the amounts requested by the Court and his disallowance of certain items which the Court had requested. Judge MONTGOMERY's award was based upon nine months remaining in the City's fiscal year, July 1, 1970 to July 1, 1971. We accordingly reduce the award to reflect the amount of time remaining in this fiscal year (five months from February 1, 1971) and award the Court of Common Pleas the sum of $1,365,555.

Judgment, as modified, is affirmed.

Mr. Justice JONES files a concurring Opinion, in which Mr. Justice EAGEN joins.

Mr. Justice POMEROY joins in the Opinion of the Court and files a concurring Opinion.

Mr. Justice ROBERTS files a concurring and dissenting Opinion.

Mr. Justice COHEN took no part in the decision of this case.

CONCURRING OPINION.

[J. 522]

IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT.

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County, v. JAMES H. J. TATE, Mayor of Philadelphia, et al., Appellants.	No. 297, Miscellaneous Docket No. 18. Appeal from the Judgment of the Court of Common Pleas, Philadelphia County, as of June Term, 1970, No. 3084.

POMEROY, J. FILED: February 16, 1971.

I join in the opinion of the Court. Much more could, of course, be written about the financial problems of Philadelphia which give rise to this controversy, about the details of the request for additional funds made by the Court of Common Pleas upon the City, and the nature of and need for the activities and facilities they represent. More could and perhaps should be said concerning the difficulties and dangers of this sort of litigation in our framework of government, involving as it does a type of confrontation between the legislative and judicial branches of government in a major metropolitan area, which should be avoided wherever possible, and resorted to only when all else has failed. The pressing and urgent need for prompt decision, however, so that both parties will know where they stand before the fiscal year has further waned, preclude a more extended treatment of these problems than that contained in the opinion.

I deem it appropriate, nevertheless, to comment briefly on one passage in the Court's opinion, and in so doing to indicate some additional considerations which have convinced me of the rightness of the result here reached.

The passage is as follows: "The confidence, reliance and trust in our Courts and in our Judicial System on the part of the Bench and the Bar, as well as the general public, have been seriously eroded. We cannot permit this to continue. In order to improve and expedite Justice, it is both important and imperative that we reexamine and revaluate our courts and their administration, our Judicial processes and our entire Judicial System." I am in complete agreement with this comment. I think it should be made clear, however, that the erosion referred to cannot be laid at the door of the defendants in this case, nor can the reappraisal of the judicial processes and system, even in Philadelphia, be considered their sole responsibility. The imperative reexamination which the Court has called for is, as I view it, one which must engage the attention and energy of all branches of government and of the public as well, but remain a principal preoccupation and responsibility of the members of the judiciary, particularly this Court,[1] and of the bar.

It perhaps goes without saying, but no harm can be done by observing, also, that the erosion of confidence in our courts and judicial system is not a recent phenomenon, nor one having a geographical focus in Philadelphia or Pennsylvania. It has been with us in its modern form since before the turn of the century, has been pervasive throughout the United States, and has been directed to the federal judicial system as well as the systems of the several states. As Dean Pound stated in his notable and now famous address of 1906 on "The Causes of Popular Dissatisfaction with the Administration of Justice":[2] "Dissatisfaction with the

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[1] See Art. V, Sec. 10 of the Pennsylvania Constitution.

[2] Roscoe Pound, address delivered at the annual meeting of the American Bar Association, 29 ABA Ann. Rep. 395-417 (Part I. 1906).

administration of justice is as old as the law . . . discontent [with our legal system] has an ancient and unbroken pedigree." Dean Pound went on to admonish, however, that "[W]e must not be deceived by . . . inevitable discontent with all law into overlooking or underrating the real and serious dissatisfaction with courts and lack of respect for law which exists in the United States today."

Space will not permit a cataloging either of the complaints and alarms concerning the administration of justice both nationally and locally in recent years,[3] or of the steps, some faltering and timid, some bold and imaginative, taken to cope with the clamant problems.[4] The point to be made, as I see it, is that the 56 judges comprising the Court of

[3] In Chief Justice Earl Warren's annual message to the American Law Institute in 1957, he stated, ". . . interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States." See also Warren, **Delay and Congestion in the Federal Courts,** 42 J. Am. Jud. Soc. 6 (1958); Warren, **The Administration of the Courts,** 51 J. Am. Jud. Soc. 196 (1968); Chief Justice Warren B. Burger, **The State of the Federal Judiciary—1970** (address to the American Bar Association, 1970), 56 ABA J 929 (1970); Burger, **Agenda for Change** (address at testimonial dinner in honor of Chief Justice John C. Bell, Jr. of Pennsylvania, 1970), 54 J. Am. Jud. Soc. 232 (1971); Exclusive Interview with Chief Justice Berger, LXIX U. S. News & World Report 32 (December 14, 1970). With particular reference to the problems of court congestion and delay, see Zeisil, Kalven and Bucholz, **Delay in the Court,** Little, Brown & Co., 1959; **Lagging Justice,** Ed. by Glenn R. Winters, Annals of the American Academy of Political and Social Science (March 1960). See also, as illustrative of the large volume of material on this subject, Luce, **The Rule of Law and the Administration of Justice** (address to the Section of Judicial Administration of the American Bar Association, St. Louis, 1961); Kaufman, **Courts in Crisis: Progress versus Intransigence,** 52 ABA J 1026 (1966); Banks, **The Crisis in the Courts,** Fortune Magazine, December 1961, the last paragraph of which reads:

> "The American courts must move fast if they would purge themselves of their present low esteem. If they do, they can be the principal institution that gives point to American national development. If they do not, there will not be much point to the development."

[4] See in general **The Improvement of the Administration of Justice,** A Handbook Prepared by the Section of Judicial Administration of the American Bar Association, 4th Ed. (1961), and the bibliographies

Common Pleas of Philadelphia, able for the first time to speak with a unified voice,[5] mindful of the judicial imperative to improve the administration of justice in Philadelphia and so stem the erosion of confidence in the courts, made a determination that certain activities of the court, particularly in the field of probation, needed increased emphasis; and that for this and other reasons increased personnel, facilities and equipment were required; and that these requirements would cost an estimated $5.2 million in fiscal 1970. This determination appears from the record to have been responsibly made. As our opinion indicates, the record likewise substantiates the trial judge's holding that the Court of Common Pleas had carried its burden of proof

contained therein; Pound, **Modern Unified Court Organization,** 23 J. Am. Jud. Soc. 225 (1940); Pound, R. **Organization of Courts** (1940); Vanderbilt, A., **Minimum Standards of Judicial Administration,** National Conference of Judicial Councils (1949); Elliott, S., **Improving Our Courts,** Oceana Publications (1959); **Report of the National Conference on Judicial Selection and Court Administration,** 43 J. Am. Jud. Soc. 114 (1959); **Articles on the Model Judicial Article,** 47 J. Am. Jud. Soc. (June 1963).

With particular reference to the situation in Pennsylvania, see Schulman, S., **Toward Judicial Reform in Pennsylvania** (U. of Pa. 1962); The Institute of Judicial Administration, **A Report to the Allegheny County Bar Association on the Courts of Allegheny County** (1960); **The Consensus on the Pennsylvania Judicial System,** as adopted by A Citizens Conference on the Modernization of Pennsylvania's Judicial System, January, 1964, under the sponsorship of the Joint Committee on the Effective Administration of Justice and the Pennsylvania Bar Association, together with the background addresses delivered at the conference (Pamphlet of the Pennsylvania Bar Association, 1964); Article V, The Judiciary, of the Pennsylvania Constitution, adopted by the Pennsylvania Constitutional Convention of 1967 and approved by the electorate April 23, 1968, effective January 1, 1969.

that the activities in question (with the exception of the

[5] The 10 separate courts of common pleas of Philadelphia County, the Orphans' Court of Philadelphia County, the County Court of Philadelphia County, the Courts of Quarter Sessions of the Peace, and of Oyer and Terminer and General Jail Delivery of Philadelphia County were abolished by the new judiciary article, and all of their jurisdiction and powers vested in one court of common pleas. Article V, Sec. 5, and Sec. 16(t) of the Schedule to Article V.

disallowed items[6]) were "reasonably necessary to enable it to perform its continuing functions as the judiciary of the City." Indeed, the City introduced no evidence to the contrary. In light of the groundswell of criticism and the remedial efforts briefly noted above, the judge's conclusion seems eminently sound.

All of this is not to say that the City Council of Philadelphia has been frugal or niggardly in its financial provision for the courts of that City. There has been a 100% increase in the amount of appropriation for the courts in the last six years and a maintenance of the same relative position in the total city budget for at least the last ten years (i.e., around 3.5% of the total city budget has been allocated to the courts during this period. It must be acknowledged also that critically important needs, especially in the large cities, are competing strenuously for a share of tax revenues, and this in a period of serious inflation. No evidence is required to establish that governments at all levels are experiencing severe financial strains. As the opinion of the Court points out, however, the court system in Philadelphia is not just another competing cause or need; it is itself a separate branch of government, co-equal with the executive and legislative branches headed by the defendants in this case. The distinction is one not of degree, but of kind. No doubt the courts must be mindful, in making the estimates of their financial needs, of the needs of the total community and of the problems of the legislative branch in funding them; but the courts having made their determination as being reasonably necessary to performance of their constitutional functions, it is not for the legislative branch to deny the reasonableness or the necessity on

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[6] The learned trial judge disallowed sums requested for the bail project, microfilming of court records, building repairs, etc. These items are in the borderline category as between the judicial and administrative functions. My vote for affirmance is without prejudice to a reconsideration of these items, should the occasion later arise, on a more extensive record delineating with precision the nature of the functions in question.

the ground that something else is more urgent or more important.[7]

I feel obligated to note, in concluding, that my vote for affirmance is not without some doubt as to the propriety, under the Philadelphia Home Rule Charter, of the Court of Common Pleas making a request before City Council for

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[7] To put the cost of financing the courts in broad perspective, the following analysis from data derived from United States census figures is of interest:

> "Public costs in America for justice are approximately $4 to $5 billion a year. This figure includes courts, police, prosecution and corrections and encompasses both civil and criminal law administration. About 60 per cent is devoted to police protection and prosecution, some 20 per cent supports the courts and 20 per cent is spent for corrections. The gross estimate is only 2.5 per cent of the $150 billion in direct expenditures of all American governments in 1962 for every purpose."
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> Saari, **An Overview of Financing Justice in America,** 50 J. Am. Jud. Soc. 296 (1967).

The 1970 Statistical Abstract for the Commonwealth of Pennsylvania shows a total expenditure during the period July 1, 1968 to June 30, 1969 for the judicial branch of $8 million against a total for all branches of government of $2.2 billion, or only about 4/10 of 1%. This is not a meaningful comparison, however, because in this state the cost of the judicial establishment is largely borne by the counties and the cities of Philadelphia and Pittsburgh. The state expenditure is principally for judicial salaries. On a consolidated basis, the only figures presently available to the writer are those which are contained in Professor Schulman's work, **Toward Judicial Reform in Pennsylvania, supra,** for the year 1957. While now out of date, the author's unofficial estimate relative to that year is worth citing:

> "The cost of the judicial system in Pennsylvania in 1957 was approximately 30 million dollars, not counting the cost of correctional and penal institutions. The state's share was approximately 4½ million, the balance being borne by the counties and the cities of Philadelphia and Pittsburgh." **Ibid.** at 181.

A strong argument can and has been made that the Pennsylvania system of divided financial responsibility between the state, its counties and the two large cities is illogical in light of the unified judicial system established by the new judiciary article of our Constitution. Weis, **A New Name and a New Financial Policy for the Courts,** 41 Pa. Bar Assn. Quarterly 189 (1970). The author there concludes:

> "It seems obvious that the time has come to implement the unified court concept on a statewide fiscal, as well as administrative basis. The Commonwealth should assume all the costs of operating the courts in this state, just as the federal government finances all the courts of the United States."

an appropriation substantially larger than that submitted to the Director of Finance pursuant to Section 6-105 of the Charter. It is true, as Judge Montgomery indicated, that there seems to have been no prejudice to the City in this instance, in that the Council's actual appropriation to the court plus the amount awarded by Judge Montgomery is less than the amount of the original request submitted by the court to the Finance Director. Nevertheless, the interest of orderly budget planning for the entire city government and the court system, a complicated task involving in excess of $500 million for the current fiscal year, would seem to require that the court, whether or not deemed a governmental "agency" within the meaning of Section 6-105, cooperate to the utmost with the fiscal officers of the City in the budget-making process. The point involved may not be governed by the literal holding of *Leahy v. Farrell,* 362 Pa. 52, 66 A. 2d 577 (1949), but in my view it is within the spirit of the decision in that case.

In closing, Chief Justice Vanderbilt's wise comments, as valid today as when he made them, seem peculiarly appropriate to the issues presented by this case:

> ". . . much remains to be done if we would adapt the law and government to the needs of the times. The situations that confront us in our life, nationally and throughout the world, are indeed momentous and some of them are without precedent. The problems of government are complicated and difficult of solution. But must it not be apparent to everyone, as we gaze into the future, that we cannot hope to maintain the way of life which we call American without exercising every effort to preserve to each branch of government its proper sphere and to the states and the Union a due recognition of their proper functions?"[8]

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[8] Vanderbilt, A., **The Doctrine of the Separation of Powers and Its Present Day Significance,** 142 (U. of Nebraska Press, 1953).

CONCURRING AND DISSENTING OPINION.

[522]

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District.

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on Behalf of the Judges of the Court of Common Pleas of Philadelphia County, v. JAMES H. J. TATE, Mayor of Philadelphia, et al., Appellants.	No. 297, Miscellaneous Docket No. 18. Appeal from the Judgment of the Court of Common Pleas, Philadelphia County, as of June Term, 1970, No. 3084.

ROBERTS, J. Filed: February 16, 1971.

I concur in the main with the majority's disposition of this appeal. The Judiciary has the power to command reasonably necessary funds, not only because of its intended status as an independent and co-equal branch of government but also by virtue of the clear mandate of Article 1, Section 11 of the Pennsylvania Constitution, which provides:

> "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and the right and justice administered without sale, denial or delay. . . ."

It is evident that these fundamental guarantees could not be honored if the Judiciary were without reasonably adequate resources.

I must dissent, however, from that portion of the majority's decision affirming the disallowance of the Philadelphia Court of Common Pleas' request for $145,881 to institute and maintain its proposed bail project. The purpose of the desired project is to evaluate persons accused of crime who cannot afford money bail and to inform the court of those within that group who deserve to be released on their own recognizance. The trial court conceded the laudable motives of the project but held that it fell "without the limits of judicial responsibility." I cannot agree.

As I stated in my recent dissenting opinion in *Commonwealth ex rel. Hartage v. Hendrick*, 439 Pa. 584, 594, 268 A. 2d 451, 455 (1970):

> "The imprisonment of an accused prior to a determination of guilt is a rather awesome thing: it costs the taxpayers tremendous sums of money; it deprives the affected individual of his most precious freedom, liberty; it deprives him of his ability to support himself and his family; it quite possibly costs him his job; it restricts his ability to participate in his own defense; it subjects him to the dehumanization of prison; it separates him from his family; and, without trial, it casts over him an aura of criminality and guilt. These deprivations are especially unjustifiable in view of the fact that many of those who are accused of crime and jailed before trial are eventually acquitted. In Philadelphia alone, over twenty-five percent of those accused who are imprisoned prior to trial are eventually discharged of all criminal liability, and many more accused spend more time in jail prior to their trial than they would have had to if they had been released and then tried, convicted and sentenced. In all these cases, and especially in those instances in which the accused is eventually exonerated from all criminal liability, the accused has been made to suffer punishment of the

> harshest variety—imprisonment—without even an adjudication of guilt, or the judicial imposition of a sentence."

Id. at 601, 268 A. 2d at 459 (footnotes omitted).

There is no goal more central to the essence of the judicial function than that of ensuring the quality of justice, and to the extent that the proposed bail project would begin to ameliorate some of the injustices arising out of the current administration of bail, funds for its implementation are certainly reasonably necessary. Indeed, the record in the instant case indicates that the proposed bail project has a favorable chance for successful results. The project was modeled after a similar program operated in 1966 and 1967 under the sponsorship of the Philadelphia Bar Foundation. In eighteen months of operation, the Bar Foundation program secured the release of 878 defendants on their own recognizance. Of that group, 229 were eventually discharged from all criminal liability. Edmund DePaul, executive director of the Bar Foundation bail project, testified that the bail project "skip rate" was between 1.9% and 4%, and compared most favorably with an estimated bonding company skip rate of 20%.

It should also be borne in mind that opposition to innovative judicial reform in this area prompted by considerations of economy is likely to be misplaced. At the time of our *Hartage* decision, the estimated yearly cost of pretrial incarceration in Philadelphia alone was more than $5,000,000 (1,484 prisoners incarcerated and waiting trial at a cost of $8.10 per prisoner per day), see 439 Pa. at 601 n. 11, 268 A. 2d at 459 n. 11, and the cost is rising. Court Administrator Edward Blake now reports that there are 1,921 prisoners incarcerated and waiting trial in Philadelphia and that the cost per prisoner per day for the fiscal year ending June 30, 1970 was $8.75. In welcome contrast to these figures, Fred Rosenbloom, Chairman of the Advisory Committee of the Philadelphia Bar Foundation bail project, testified that the project *saved* the City of Philadelphia approximately $500,000 by reducing needless pretrial incar-

ceration. Furthermore, as this experimental program was able to reach only a portion of the deserving cases, the potential exists for much greater savings in the future.

In sum, the proposed bail project presents a rare and realistic opportunity to improve the administration of justice and minimize the social costs of pretrial imprisonment, all at a substantial savings to the taxpayers. For this reason, I would allow the funds requested by the Philadelphia Court of Common Pleas for its implementation and dissent from the majority's disallowance of those funds.

CONCURRING OPINION.

[522]

IN THE SUPREME COURT OF PENNSYLVANIA
Eastern District.

COMMONWEALTH OF PENNSYLVANIA ex rel. HONORABLE VINCENT A. CARROLL, Individually and on behalf of the Judges of the Court of Common Pleas of Philadelphia County, v. JAMES H. J. TATE, Mayor of Philadelphia, et al., Appellants.	No. 297, Miscellaneous Docket No. 18. Appeal from Judgment of Court of Common Pleas, Philadelphia, Trial Division, Civil Section, as of June Term, 1970, No. 3084.

JONES, J. Filed: February 16, 1971.

While I concur in the result achieved by the majority, I must note my disagreement with the precedent thereby established.

At first glance, the majority's statement—"the deplorable financial conditions in Philadelphia must yield to the Constitutional mandate that the Judiciary shall be free and independent and able to provide an efficient and effective system of Justice"—would appear most commendable. Stated differently, the majority essentially holds that whatever amount is "reasonably necessary" for judicial administration must be awarded *even though the City may have no available funds.* With this proposition I cannot agree; in my opinion, the computation of a "reasonably necessary" amount must consider the financial resources available to the city. However, the record demonstrates that these ad-

ditional funds have already been set aside and that the City of Philadelphia will not be forced into "involuntary bankruptcy." It is for this fact that I am able to concur.

The majority fails to realize the full import of its standard. If this Court holds that funds must be afforded the Judiciary if "reasonably necessary," could a future majority, while stressing the fundamental co-equality of all three branches of government, logically deny this same standard to the Executive branch of government (the Legislative branch already controlling the power of the purse)? Unless that majority is prepared to nominate the Judiciary for a *primus inter pares* status, this question must be answered in the negative. Although the Executive, unlike the Judiciary, is ofttimes able to resolve these difficulties in the political arena, I would be most reluctant to rely on the mercurial world of politics as the Executive's only recourse.

Predictably, a future City Council could then be swamped by "reasonably necessary" requests from the Police Department, Sanitation Department, Recreation Department and all other departments of the Executive branch. Unquestionably more money would enable each of these departments to better serve the community. However, the sum of these "reasonably necessary" requests may very well, in some future instance, exceed a municipality's available revenue resources. Projecting the present majority's original premise and *realizing all three branches operate in an imperfect world,* I must take issue with the majority's overly optimistic precedent.

Certainly taxes could be increased to cover any impending deficit. Certainly those of us in the Judicial branch of government must zealously defend our independence. Perhaps my prediction is a bit too gloomy. However, I would all too eagerly embrace the majority if only it would recognize that what is "reasonably necessary" cannot fail to consider the financial plight of the city.

Mr. Justice Eagen joins in this Concurring Opinion.

APPENDIX "C".

United States Constitution

Article IV, Section 4

Republican Form of Government and Protection Guaranteed the Several States

Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Fourteenth Amendment, Section 1

Citizenship Defined; Privileges of Citizens

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the Commonwealth of Pennsylvania

Article XV, Section 1

Home Rule

Section 1. Cities may be chartered whenever a majority of electors of any town or borough having a population of

at least ten thousand shall vote at any general or municipal election in favor of the same. Cities, or cities of any particular class, may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject, however, to such restrictions, limitations, and regulations, as may be imposed by the Legislature. Laws also may be enacted affecting the organization and government of cities and boroughs, which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon. (Amendment of November 7, 1922.)

Philadelphia Home Rule Charter

Section 1-101. *Legislative Power.* The legislative power of the City, including any such power which may hereafter be conferred on the City by amendment of the Constitution or by the laws of the Commonwealth of Pennsylvania, shall be exclusively vested in and exercised by a Council, subject only to the provisions of this charter. The Council shall be elected, shall organize and shall function as provided in this charter.

Section 2-300. *The Annual Operating Budget Ordinance.*

(1) It shall be the duty of the Council, at least thirty days before the end of the fiscal year, to adopt the annual operating budget ordinance for the next fiscal year. The consideration of the operating budget ordinance shall begin forthwith upon the receipt from the Mayor of his annual operating budget message and the proposed annual operating budget ordinance, both of which shall be submitted in printed form. The proposed budget ordinance shall be regarded as having been introduced immediately upon its receipt.

(2) The annual operating budget ordinance shall provide for discharging any deficit and shall make appropriations to the Council, the Mayor, and all officers, depart-

ments, boards and commissions which form a part of the executive or administrative branch of the City government, and for all other items which are to be met out of the revenue of the City. All appropriations shall be made in lump sum amounts and according to the following classes of expenditures for each office, department, board or commission:

(a) Personal services;

(b) Materials, supplies and equipment;

(c) Debt service;

(d) Such additional classes as the Mayor shall recommend in his proposed annual operating budget ordinance.

Expenditures for the repair of any property, for the regrading, repaving or repairing of streets, and for the acquisition of any property or for any work or project which does not have a probable useful life to the City of at least five years following the time the expenditure is made for it shall be deemed to be ordinary expenses to be provided for in the annual operating budget ordinance. Appropriations for the use of any departmental board or commission shall be made to the department with which it is connected.

(3) The Mayor's estimates of receipts for the ensuing fiscal year and of surplus or deficit, if any, for the current fiscal year may not be altered by the Council.

(4) In every annual operating budget ordinance:

(a) An amount at least equal to one-half of one per cent of the aggregate of all appropriations for compensation to City employees in the civil service shall be appropriated for the work of the Personnel Director and the Civil Service Commission;

(b) The amount appropriated to the Auditing Department shall be adequate to enable the City Controller to perform the duties of his office and of the Auditing Department. Should the Council fail to make

an adequate appropriation to the Auditing Department, the City Controller may petition any Court of Common Pleas of Philadelphia County for a mandamus to the Council to perform its duty under this section;

(c) Provision shall be made for the payment of compensation to certified public accounting firms for consulting services which may be rendered to the Auditing Department with regard to the manner in which the affairs of the various offices, departments, boards, commissions and other agencies receiving appropriations from the City are audited by the Auditing Department;

(d) Provision shall be made for the payment of compensation to a firm of certified public accountants to make an audit of the expenditures of the Auditing Department. The Council shall, by separate ordinance, name the firm of certified public accountants to be engaged for this purpose.

(5) At least once in three years provision shall be made for the payment of compensation to a firm of certified public accountants to make an examination of the manner in which the Auditing Department performs its auditing duties. The Council shall, by separate ordinance, name the firm of certified public accountants to be engaged for this purpose.

(6) The annual operating budget ordinance may be amended after its passage to authorize the transfer of items but the aggregate of the appropriations made by it may not be increased and transfers of budget items may not be made during the last four months of any fiscal year, except upon the recommendation of the Mayor.

Section 2-301. *Other Appropriations.* The Council may not make any operating appropriations in addition to those included in the annual operating budget ordinance except:

(a) To meet emergencies which could not be anticipated when the operating budget ordinance was passed;

(b) To pay the expenses of holding recall and special elections and elections on proposals to amend this charter;

(c) To pay such salary as the Civil Service Commission, pursuant to the provisions of this charter, may have awarded to a Managing Director whose dismissal by the Mayor the Commission found to be unwarranted;

(d) To pay the costs of councilmanic investigations and inquiries and the compensation of attorneys retained by the Council as authorized by this charter.

Unless paid for out of current revenues, all amounts appropriated under this section must be included as liabilities of the City in the next succeeding annual operating budget ordinance and except to meet emergenices, operating expenses shall neither be appropriated nor paid out of loan funds.

Section 2-302. *Balancing the Budget.* Not later than the passage of the annual operating budget ordinance, the Council shall ordain such revenue measures as will, in the opinion of the Mayor, yield sufficient revenue to balance the budget. For this purpose new sources of revenue or increased rates from existing sources of revenue not proposed by the Mayor shall be deemed to yield in the ensuing fiscal year such amounts as the Mayor shall determine. The annual operating budget ordinance shall not become effective and the City Controller shall not approve any order for any expenditure thereunder until the Council has balanced the budget.

Section 4-101(b).

(b) Submit to the Council not later than ninety days before the end of the fiscal year his operating budget message and a proposed annual operating budget ordinance for the ensuing fiscal year. In the operating budget message the Mayor shall furnish to

the Council the estimated surplus, or deficit, if any, of the current fiscal year and the estimated actual receipts of the City from all sources for the ensuing fiscal year which shall be available for meeting ordinary expenses and all other information pertinent to an operating budget, shall state the known liabilities of every kind which must be met during the year, and shall recommend appropriations included in the proposed annual operating budget ordinance;

Section 8-102. *Estimates of Current Expenditures by Departments, Boards and Commissions.* In order to enable the Mayor to avoid deficits and to check on performance, each officer, department, board and commission of the City, or other agency receiving a City appropriation shall from time to time as requested by the Mayor prepare and submit to him through the Director of Finance for approval or disapproval an estimate of the amount of money required for each activity or function to be carried on by him or it during the ensuing month, quarter or such other period of the current fiscal year as the Mayor shall prescribe. If such estimate does not meet with the approval of the Mayor, it shall be revised in accordance with the Mayor's direction and resubmitted for approval; but the Mayor shall not reduce the estimates of the City Council or of the Auditing Department without their consent nor the estimates of the Personnel Director and the Civil Service Commission below one-half of one per cent of the amount to be expended for compensation for civil service employees.

After the approval of any such estimate, it shall be unlawful for the Director of Finance to approve the expenditure or encumbrance of any appropriation or part thereof except in accordance with such estimate, unless the same be revised with the approval of the Mayor.

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COUNTER STATEMENT.

This suit was instituted by President Judge Vincent A. Carroll,[1] on behalf of the Court of Common Pleas of Philadelphia, on June 16, 1970, after the Philadelphia City Council had rejected the request of the Court of Common Pleas for additional funds necessary for Court administration.

The Pennsylvania Supreme Court appointed a judge of the Superior Court of Pennsylvania, an intermediate appellate court, to preside specially. The pleadings were promptly completed and the legal issues delineated. Trial started on August 14, 1970, during which the Court of Common Pleas introduced extensive testimony to prove the funds requested were reasonably necessary for the continued operation of the Court.

Prior to starting suit, the Court of Common Pleas presented its financial needs to the City Finance Director, the Mayor and members of City Council, at the various hearings on budget requests held by these municipal agencies pursuant to the Philadelphia City Charter. It was only after the identical amounts requested in the present suit were rejected by the City Council, after a factually documented presentation by Respondent, that the present suit was started, as a last resort.

Although the Court of Common Pleas initially requested $5,230,117.00 in its Complaint, this figure was amended and reduced to $3,962,532.00 after the completion of testimony. The lower trial Court awarded the Court of Common Pleas $2,458,000.00 and the Supreme Court of Pennsylvania, in affirming the judgment of the trial court, reduced the amount of the judgment to $1,365,555.00, solely

1. On Nov. 16, 1970, President Judge Carroll retired from his office as Judge of Court of Common Pleas of Philadelphia (he died Dec. 4, 1970); on Dec. 2, 1970, Hon. D. Donald Jamieson, the present Respondent, became President Judge of the Court.

because of the delay that had taken place during the fiscal year (July 1, 1970-June 30, 1971), as the judgment is only effective during the present fiscal year, and the judgment will become moot as of June 30, 1971.

The reasons that compelled the filing of the instant suit were explained by Judge Carroll in his testimony at the budget hearings before City Council on May 4, 1970 when he stated:

> "The problems of administering a court system in a large metropolitan city without sufficient judges, court personnel, an archaic court system and a court system with many divided jurisdictions are multitudinous, and yet, despite all these limitations the administration of the Courts of Philadelphia is doing an extraordinary competent job considering the problems confronting us. The budget which we submitted to the Finance Department and which was rejected almost totally by the Mayor is vitally necessary to the efficient operation of the Philadelphia Courts."
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> • • •
>
> "The Judiciary can no longer permit its rate of progress and efficiency to be measured by a non-responsive and antagonistic executive who completely misunderstands the role and function of a separate and distinct branch of government."

Respondent's mandamus action sought additional funds for the following purposes:

¶ additional personnel as probation officers.

¶ release-on-recognizance bail project.

¶ miscellaneous personnel requirements, such as law clerks for Judges and apprehension of "bail jumpers."

¶ equipment necessary for functioning of the Court, (e.g., data processing, copying).

Following the completion of testimony the lower court issued a writ of mandamus in the amount of $2,458,000, for various personnel and equipment requirements, and both parties filed exceptions—Petitioners alleging that no award should have been made, and respondents alleging that the trial court erred in reducing or disallowing certain items which Respondent had proven reasonably necessary for court administration. The exceptions were dismissed by the trial court, and an appeal was immediately taken by both petitioners and respondent to the Pennsylvania Supreme Court. The within petition was filed following the opinion of the Pennsylvania Court, and denial of rehearing by that Court.

Petitioners moved for a stay of the mandate from the Pennsylvania Supreme Court, which was denied March 24, 1971; and a similar motion to this Court was denied by Associate Justice William J. Brennan, sitting as Circuit Justice, on April 2, 1971.

REASONS WHY WRIT SHOULD NOT BE GRANTED.

Petitioners have challenged the inherent power of the judiciary to compel the Mayor and City Council of Philadelphia to appropriate for the Court of Common Pleas of Philadelphia, those sums that are reasonably necessary for that Court to carry out is constitutionally and legislatively mandated duties.

In asserting for the first time in this Petition any federal constitutional question, they have alleged three reasons in support of their Petition for Certiorari:

(1) Compliance with the final judgment violates the principle of one man one vote as guaranteed under the XIV amendment of the United States Constitution and as construed by this Court in *Baker v. Carr,* 369 U. S. 186 (1962), and related cases (See Petitioners Questions Presented, No. 1).

(2) Giving the judicial branch the power to compel funds for its reasonable needs is a form of taxation without representation and violates Article IV, Section 4 of the United States Constitution in that it denies to the people of Pennsylvania the right to a Republican Form of Government (See Petitioners' Questions Presented, No. 1).

(3) There is no evidence in this case that the denial of funds by local government has destroyed or impaired the judicial function—and therefore granting the relief sought by the Common Pleas Court of Philadelphia in this case constitutes an unlawful interference with the Separation of Powers principle (See Petitioners' Questions Presented No. 2).

This Court should disallow petitioners request for all or any one of the following reasons:

(1) Petitioners have no *right* to raise these alleged federal constitutional issues because, in violation of this Court's rule in *Cardinale v. Louisiana,* 394 U. S. 437 (1969), they failed to raise them in any of the State Court proceedings at any level.

(2) The one man one vote principle of *Baker v. Carr, supra,* and related cases arises only under the equal protection clause of the XIV amendment and applies only where there has been demonstrated discrimination among the same classes or categories of voters. No such question is raised by the instant case.

(3) The right to a Republican Form of Government is concerned with the peoples' right to elect their own representatives who *make* the laws. No such limitation applies under the United States Constitution to the right of the people in each of the several states to delegate the power to *interpret and apply* the laws to an independent judicial branch.

(4) The right to a Republican Form of Government under Article IV, Section 4 of the United States Constitution is a political issue for the Congress and not a justiciable issue for the Courts. See *Luther v. Borden,* 77 How. 1 (1849) and *Highland Farms v. Agnew,* 300 U. S. 608 (1936).

(5) Petitioners have no standing to raise the alleged constitutional issues discussed in paragraphs two and three above in that only a citizen of a state, (and not the state itself), can raise issues of alleged discrimination in the question of voting rights and proportional representation.

(6) The scope and division of power among the Judicial, Executive, and Legislative branches of state government is solely a question of state law—and does not invoke any question of federal or constitutional law. See *Highland Farms v. Agnew*, 300 U. S. 608, (1936).

(7) The record in the instant case established overwhelmingly—and in fact is uncontradicted—that the funds sought and allowed were urgently needed, were reasonably necessary, and that their denial would impair the Court in performing its constitutionally and legislatively mandated functions of judicial administration.

1. Failure to Raise Federal Constitutional Issues in the State Court.

The arguments that the right to a republican form of government under Article IV, § 4 of the United States Constitution is being violated, as well as the issue of "one-man, one-vote," were not raised in the Pennsylvania trial Court, or in the Pennsylvania Supreme Court, and therefore should not be considered by this Honorable Court.

In *Cardinale v. Louisiana*, 394 U. S. 437 (1969), this Court held it would not review alleged federal constitutional violations not raised in the state Court:

> It was very early established that the Court will not decide federal constitutional issues raised here for the first time on review of state court decisions. In *Crowell v. Randell*, 10 Pet. 368, 9 L. Ed. 458 (1836), Justice Story review the earlier cases commencing with *Owings v. Norwood's Lessee*, 5 Cranch 344, 3 L. Ed. 120 (1809), and came to the conclusion that the Judiciary Act of 1789, c. 20, § 25, 1 Stat. 85, vested this

Court with no jurisdiction unless a federal question was raised and decided in the state Court below. "If both of these do not appear on the record, the appellate jurisdiction fails." 10 Pet. 368, 391. The Court has consistently refused to decide federal constitutional issues raised here for the first time on review of state court decisions both before the *Crowell v. Nicholls,* 4 Wheat, 311, 315, 4 L. Ed. 578 (1819), and since, *e.g., Safeway Stores Inc. v. Oklahoma Retail Grocers, Ass'n, Inc.,* 360 U. S. 334, 342, n. 7, 79 S. Ct. 1196, 1201, 3 L. Ed. 2d 1280 (1959), [citing other cases]. 394 U. S. at 438.

2. The Judgment of the Pennsylvania Supreme Court Does Not Violate the One-Man, One-Vote Principle.

Baker v. Carr, 369 U. S. 186 (1962), was decided under the 14th Amendment's equal protection clause, and determined the extent to which the federal courts may enforce the equal protection clause to limit a state legislature in designing unequal geographical districts from which representatives are chosen. As interpreted in *Baker* and later cases, the concept of "one-man one vote" means that some voters must not be placed in a position of inequality vis-a-vis other voters; i.e., one person's vote must be counted equally with that of another person. *Reynolds v. Sims,* 377 U. S. 533, 560 (1964).

This case, dealing with the rights of the judiciary vis-a-vis the legislative and executive branches of government, does not in any way offend the one-man one-vote principle. The Judges of the Court of Common Pleas of Philadelphia are elected in a city-wide election, by all voters of the City. Further, Petitioners do not allege any discrimination among classes of voters.

Petitioners in raising the issue of "one-man one-vote," fail to show any discrimination which is recognizable under the equal protection clause. To the extent petitioners are trying to assert a general right of a citizen to have state government administered according to certain laws, such a right, if it exists, is not enforceable by federal courts. *Fairchild v. Hughes*, 258 U. S. 126 (1922).

Although the direct holdings of *Baker* and *Reynolds* have no application to this case, the policy underlying these decisions supports the opinion of the Pennsylvania Supreme Court in this case. For the "reapportionment cases" demonstrate that if the legislative branch fails to carry out its mandated duties—in the present context, to provide adequate funding for the courts—then the judicial branch will act to maintain a proper balance of power—and enforce the constitutional balance. Just as *Baker* holds that malapportionment presents a justiciable controversy, so the present case stands for the proposal that legislative sapping of financial support for the judiciary presents a substantial threat to judicial independence, remedial by a mandamus action by the judicial branch against the legislative and executive branches.

3. The Guaranty of a Republican Form of Government Under the United States Constitution Does Not Affect the Power of a State Judiciary to Interpret and Apply the Law.

Petitioners contend that the recognition of inherent power in the Judiciary to compel funds for judicial administration is equivalent to the power to tax—and therefore denies to the people their right to a republican form of government. This is preposterous.

In the first place, the judiciary's inherent power is limited to things judicial—and as pointed out in Section 6

below, is an integral part of the genius of our unique separation of powers principle. Without this inherent power, the judiciary, being the weakest of its sister branches, would be at the mercy and subject to the political control and domination by the executive and legislative branches. This would be the rankest form of the denial of due process and make a mockery of our judicial system.

Secondly, it seems clear beyond peradventure that the guaranty of Article IV, Section 4 applies only to the law making function of government.

Nothing in the United States Constitution limits the power of the people of the various states to delegate to an independent judicial branch[2] the responsibility to *interpret and apply* the laws. As this Court held in the landmark case of *Marbury v. Madison*, 1 Cranch 137, 177-8 (1803):

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.
>
> So, if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the Court must either decide that case conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty.

2. Under the Pennsylvania Constitution, all judges are elected by the people. Thus it could be argued that this fulfills the requirement of a republican form of government even as respects the judiciary. But this would be a slender reed indeed, on which to lean in disposing of this issue—for if Petitioners' legal argument were to be accepted, it would mean that no state, or for that matter, not even the Congress could permit life time appointments to the judiciary—which is a time honored principle that has recently received renewed endorsement by the President's Williamsburg Conference on the Judiciary. See Article in New York Times, March 12, 1971, p. 18.

4. The Right to a Republican Form of Government, Under Article IV, § 4 of the United States Constitution, Is Non-Justiciable.

It has long been held that, on the federal level, only Congress, and not federal Courts, has the power to enforce Art. IV, § 4. It was established in the pioneer case of *Luther v. Borden*, 7 How 1 (1849), that questions arising under this section are political, not judicial in character and that "it rests with Congress to decide what government is the established one in a State . . . as well as its republican character." And as Mr. Justice Cardozo said, in *Highland Farms v. Agnew*, 300 U. S. 608 (1936); upholding a state's delegation of legislative-type power to an administrative agency:

> How power shall be distributed by a state among its governmental organs is commonly, if not always a question for the state itself. Nothing in the distribution here attempted supplies the basis for exception. The statute is not a denial of a republican form of government. Constitution, Art. IV, Section 4. Even if it were, the enforcement of that guarantee according to settled doctrine, is for Congress, not the Courts . . .
>
> . . . A judgment by the highest court of a state as to the meaning and effect of its own constitution is decisive and controlling everywhere. 300 U. S. at 612-13.

And *Baker v. Carr*, 369 U. S. 186 (1962), in holding that cases of unequal representation were justiciable in federal courts, expressly reached this conclusion under the 14th Amendment's equal protection clause, and reaffirmed *Luther v. Borden* in refusing to resort to the "Guaranty Clause" of Art. IV, § 4.

5. Petitioners Do Not Have Standing.

Petitioners are acting exclusively in their official capacity, and thereby do not have standing to raise issues such as one-man one-vote, and denial of a republican form of government. *Baker v. Carr, supra,* held that standing existed only if there was:

> such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional question. 369 U. S. at 204.

In *Baker,* as in most other apportionment cases following in its wake, the plaintiffs have been individual voters, aggrieved because of the diminution of their vote in comparison with other equally situated voters. Petitioners herein can show no such personal interest.

6. Division of Power Among Branches of State Government Does Not Present a Federal Question.

Petitioners' argument concerning the "doctrine of separation of powers" is purely a matter of state constitutional interpretation and fails to raise a question under the constitution of the United States, which does not impose such a doctrine on the various states of the United States. Nonetheless, Pennsylvania does in fact adhere to the doctrine.[3]

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3. Pennsylvania decisions have long upheld the principle of separation of powers as a matter of state constitutional doctrine, *Case of Borough of West Philadelphia,* 5 W&S 281 (1843); *Commonwealth v. Mann,* 5 W&S 403 (1843); *De Chastelleux v. Fairchild,* 15 Pa. 18 (1850); *Commonwealth ex rel. Attorney General v. Mathues,* 210 Pa. 372 (1904); *Bailey v. Waters,* 308 Pa. 309 (1932); *Wilson v. Philadelphia School District,* 382 Pa. 225 (1937); *Leahey v. Farrell,* 362 Pa. 52 (1949); *Lennox v. Clark,* 372 Pa. 355 (1953); *Commonwealth v. Knox,* 172 Pa. Super. 510 (1953) and *Stander v. Kelley,* 433 Pa. 406 (1969), and the opinion of the Supreme Court of Pennsylvania in this case confirms and strengthens this principle.

The present suit was brought under the established principle that the judiciary, as a separate and equal branch of government, possesses all powers coequal with its duties and possesses the inherent power to determine and compel payment of those sums that are reasonable and necessary to carry out its mandated responsibilities for judicial administration. If it were otherwise, the judicial system would be at the mercy of the legislative or executive branch of government, subservient thereto, and not an equal and coordinate power.

The principle of inherent power of courts is settled doctrine in Pennsylvania and other states; counsel for Respondent represents that extensive legal research has conclusively shown that every state court that has considered this principle, has approved it.

Providing additional funds for court purposes by application of the inherent power principle has been recently upheld by the highest courts of, *e.g.*, Indiana, *Carlson v. State ex rel. Stodolan,* 247 Ind. 172, 22 N. E. 2d 532 (1966); Michigan, *Judges for Third Circuit v. County of Wayne,* 172 N. W. 2d 436 (1969); and Colorado, *Smith v. Miller,* 153 Colo. 35, 384 P. 2d 738 (1963).

That separation of powers, or the mode of separation, is not enforceable on states by federal courts, is seen from the quotation, *supra,* in Justice Cardozo's opinion in *Highland Farms v. Agnew,* 300 U. S. 608, 612-3 (1908) (see page 10 above).

Furthermore, the opinion of Pennsylvania Supreme Court in this case is completely supported by the Pennsylvania Court's interpretation of the Pennsylvania Constitution, and thereby rests on an adequate and independent state ground. In *Herb v. Pitcairn,* 324 U. S. 117 (1945), this court remanded a case under the Federal Employees' Liability Act to a state court to determine whether the case

rested on an independent state ground. As Mr. Justice Jackson said, 324 U. S. at 125-6:

> This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. [citing cases] The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.

7. The Record in the Case Showed the Urgent Need for Funds Mandated.

The Court of Common Pleas presented extensive testimony, by Judges of the Court, the Court Administrator and his staff, and by various members of the bar; as well as numerous Exhibits; to prove the urgent necessity of the funds sought. The opinion of the Pennsylvania Supreme Court endorsed the "reasonably necessary" test and found that the factual record before the trial Judge warranted additional funds:

> The Court does not have unlimited power to obtain from the City whatever sums it would like or believes it needs for its proper functioning or adequate administration. Its wants and needs must be proved by it to be

> "reasonably necessary" for its proper functioning and administration, and this is always subject to Court review.
>
> * * *
>
> We agree with Judge Montgomery's conclusion that "the amount recommended by Mayor Tate and approved by Council is inadequate to meet the reasonable needs of the Court [of Common Pleas] for the present fiscal year."

Because the Judgment of the Pennsylvania Supreme Court includes findings of fact, supported evidentially by the trial court record, showing the urgent need for additional funds by the Court of Common Pleas, this Court should not grant certiorari to review a state court's factual determinations. See *Portland Railroad Co. v. Oregon Railroad Commission*, 229 U. S. 397 (1913).

CONCLUSION.

For the foregoing reasons, the Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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